No. 16-460	
Title:	**Stephanie C. Artis, Petitioner** **v.** **District of Columbia**
Docketed:	October 7, 2016
Lower Ct:	District of Columbia Court of Appeals
Case Numbers:	(15-CV-0243)
Decision Date:	April 7, 2016
Rehearing Denied:	July 20, 2016
Questions Presented	

DATE	PROCEEDINGS AND ORDERS
Oct 06 2016	Petition for a writ of certiorari filed. (Response due November 7, 2016)
Oct 19 2016	Waiver of right of respondent District of Columbia to respond filed.
Nov 02 2016	DISTRIBUTED for Conference of November 22, 2016.
Nov 03 2016	Response Requested. (Due December 5, 2016)
Dec 01 2016	Order extending time to file response to petition to and including January 4, 2017.
Jan 04 2017	Brief of respondent District of Columbia in opposition filed.
Jan 17 2017	Reply of petitioner Stephanie C. Artis filed.
Jan 18 2017	DISTRIBUTED for Conference of February 17, 2017.
Feb 21 2017	DISTRIBUTED for Conference of February 24, 2017.
Feb 27 2017	Petition GRANTED.
Mar 29 2017	The time to file the joint appendix and petitioner's brief on the merits is extended to and including May 25, 2017.

Mar 29 2017	The time to file respondent's brief on the merits is extended to and including August 11, 2017.
May 11 2017	Motion to dispense with printing the joint appendix filed by petitioner Stephanie C. Artis.
May 25 2017	Brief of petitioner Stephanie C. Artis filed.
May 30 2017	Motion to dispense with printing the joint appendix filed by petitioner GRANTED.
Aug 11 2017	Brief of respondent District of Columbia filed.
Aug 18 2017	Motion of Wisconsin and 23 other states for leave to participate in oral argument as amici curiae and for divided argument filed.
Aug 18 2017	Brief amici curiae of National Conference of State Legislatures, et al. filed.
Aug 18 2017	Brief amici curiae of Wisconsin and 23 other states filed.
Aug 31 2017	SET FOR ARGUMENT on Wednesday, November 1, 2017
Sep 07 2017	CIRCULATED
Sep 11 2017	Reply of petitioner Stephanie C. Artis filed. (Distributed)
Sep 12 2017	Record requested from the D.C. Court of Appeals.
Sep 25 2017	Motion of Wisconsin and 23 other states for leave to participate in oral argument as amici curiae and for divided argument DENIED.
Nov 01 2017	Argued. For petitioner: Adam G. Unikowsky, Washington, D. C. For respondent: Loren L. AliKhan, Deputy Solicitor General, Washington, D. C.
Jan 22 2018	Judgment REVERSED and case REMANDED. Ginsburg, J., delivered the **opinion** of the Court, in which Roberts, C. J., and Breyer, Sotomayor, and Kagan, JJ., joined. Gorsuch, J., filed a dissenting opinion, in which Kennedy, Thomas, and Alito, JJ., joined.

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RECORD AND BRIEFS

16-460

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No. ___

IN THE
Supreme Court of the United States

STEPHANIE C. ARTIS,
Petitioner,
v.
DISTRICT OF COLUMBIA,
Respondent.

On Petition for a Writ of Certiorari to the District of Columbia Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Section 1367 of Title 28 authorizes federal district courts in certain circumstances to exercise supplemental jurisdiction over claims arising under State law.

Section 1367 further provides that "[t]he period of limitations for any [such] claim . . . shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period." 28 U.S.C. § 1367(d).

The question presented is whether the tolling provision in § 1367(d) suspends the limitations period for the state-law claim while the claim is pending and for thirty days after the claim is dismissed, or whether the tolling provision does not suspend the limitations period but merely provides 30 days beyond the dismissal for the plaintiff to refile.

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OPINIONS BELOW

The opinion of the District of Columbia Court of Appeals is reported at 135 A.3d 334, and is reprinted in the Appendix to the Petition ("Pet. App.") at 1a. The opinion of the Superior Court for the District of Columbia is unreported and is reprinted at Pet. App. 12a.

JURISDICTION

The District of Columbia Court of Appeals issued its opinion on April 7, 2016. Petitioner's timely petition for panel and *en banc* rehearing was denied on July 20, 2016. The jurisdiction of this Court is properly invoked pursuant to 28 U.S.C. § 1257.

STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 1367(a) provides:

> Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

28 U.S.C. § 1367(d) provides:

> The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.

INTRODUCTION

When a plaintiff brings claims in federal court over which the court has original jurisdiction, section 1367(a) of Title 28 authorizes the court to exercise supplemental jurisdiction over related state-law claims. But that grant of jurisdiction is not mandatory: a federal district court is authorized to "decline" to exercise jurisdiction over such state-law claims if certain statutory criteria are met. *See* 28 U.S.C. § 1367(c). Most commonly, if the court dismisses all of the plaintiff's federal claims, § 1367 allows the court to decline to exercise jurisdiction over the residual supplemental state-law claims. *Id.* § 1367(c)(3).

If a federal court dismisses a plaintiff's federal claims and then declines to exercise jurisdiction over state-law claims, the risk arises that the plaintiff will be unable to refile those state-law claims in state court because the statute of limitations on the state-law claims will have expired. To avoid that outcome, Congress enacted § 1367(d), which provides that "[t]he period of limitations for any [such] claim . . . shall be tolled while the claim is pending and for a period of 30

days after it is dismissed unless State law provides for a longer tolling period."

That tolling provision is the subject of a substantial and acknowledged conflict of authority. On one side of the conflict are courts that interpret the provision to mean that the limitations period is suspended during the pendency of the state-law claim in federal court and for an additional 30 days after its dismissal. Courts refer to this approach as the "suspension" approach. On the other side of the conflict are courts that interpret the provision to mean that the limitation period continues running during the pendency of the state-law claim in federal court, and that the plaintiff merely gets a 30-day grace period to refile the state-law claim in state court after it is dismissed by the federal court. Courts refer to this approach as the "grace period" or "extension" approach.

The two approaches yield two materially different limitations periods. Consider a plaintiff who is fired from her job on June 1, 2010. She files suit in federal court one year later, on June 1, 2011, alleging violations of Title VII as well as related state claims that carry a two-year statute of limitations. The district court dismisses the plaintiff's Title VII claim on June 1, 2013 on grounds inapplicable to the state-law claims, and declines to continue exercising supplemental jurisdiction over the state-law claims.

Under the suspension approach, the two-year limitations period for the state-law claims is suspended between June 1, 2011, and June 1, 2013, and then for an additional 30 days—until July 1, 2013. At that point, the limitations clock restarts, leaving the plaintiff with

an additional year—until July 1, *2014*—to refile in state court. By contrast, under the grace period approach, the limitations clock on the state-law claims continues to run while the federal claim is pending, and expires on July 1, 2012—a year before the federal court chose to decline jurisdiction over the state-law claims. Thus, under that approach, the plaintiff receives only a 30-day "grace period" to refile the state-law claims, which expires on July 1, *2013*—a year before the expiration of the limitations clock under the suspension approach.

In the decision below, the D.C. Court of Appeals adopted the "grace period" approach, joining the high court of California and numerous intermediate appellate courts.[1] By contrast, the high courts of Maryland and Minnesota, along with the Sixth Circuit, have adopted the "suspension" approach. This Court's review is warranted to resolve this conflict of authority on a recurring issue of federal law.

On the merits, the D.C. Court of Appeals' interpretation of § 1367(d) cannot be reconciled with the statutory text. Section 1367 says that the limitations period is "tolled" during the pendency of the action. The word "tolled" means "suspended." The courts that treat the limitations period as running during the pendency of the action are simply not "tolling."

For all these reasons and those presented below, Petitioner respectfully ask this Court to grant the petition.

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[1] The District of Columbia is defined as a "State" for purposes of this statute. *See* 28 U.S.C. § 1367(e).

STATEMENT OF THE CASE

The District of Columbia hired Petitioner in August 2007 as a Department of Health code inspector. Pet. App. 2a. On April 17, 2009, Petitioner filed a discrimination claim against her supervisor and the Department of Health with the U.S. Equal Employment Opportunity Commission ("EEOC"), alleging unlawful discrimination. *Id.* Thereafter, Petitioner filed a number of additional grievances challenging various notices of proposed infractions against her and also alleged her supervisor violated other employee rights regulations. *Id.* On November 15, 2010, Petitioner was informed that the Department of Health had terminated her. In January 2011, she filed a grievance alleging that the termination was retaliation for her actions against her supervisor. *Id.*

Petitioner filed suit against the District of Columbia in the United States District Court for the District of Columbia on December 16, 2011, alleging that she was terminated in violation of Title VII, 42 U.S.C. § 2000e-5, and asserting claims under the District of Columbia Whistleblower Act, D.C. Code § 1-615.54, the District of Columbia False Claims Act, D.C. Code § 2-381.04, and for wrongful termination against public policy. *See* Complaint, *Artis v. D.C.*, No. 11-cv-02241-JEB (D.D.C. Dec. 16, 2011), ECF No. 1. At the time Petitioner filed her suit, "[t]here were nearly two years remaining on the statute of limitations" for her state-law claims. Pet. App. 4a.

On June 27, 2014, the district court granted summary judgment for Respondent on the Title VII claim, and declined to exercise supplemental jurisdiction over the remaining state claims, pursuant to 28 U.S.C. § 1367(c)(3). *See Artis v. D.C.*, 51 F. Supp. 3d 135, 141 (D.D.C. 2014). In doing so, the court noted that Petitioner's ability to refile her state claims would not be prejudiced, because § 1367(d) "provides for a tolling . . . during the period the case was here and for at least 30 days thereafter." *Id.* at 142.

On August 25, 2014—fifty-nine days after the district court dismissed her federal suit—Petitioner refiled in D.C. Superior Court. Pet. App. 3a. On January 29, 2014, the Superior Court granted Respondent's motion to dismiss, concluding that § 1367(d) required Petitioner to file her suit within 30 days of the federal court's dismissal of her state-law claims, and that her claims were thus time-barred. Pet. App. 3a-4a.

Petitioner appealed, and on April 7, 2016, the D.C. Court of Appeals affirmed. In its opinion, the court first observed that "the parties have advanced two respective positions which are consistent with the competing approaches that have evolved nationally relating to the tolling provision of the statute presented." Pet. App. 6a. The court noted that some courts have "adopt[ed] the 'suspension' approach . . . liken[ing] tolling to a 'clock that is stopped and then restarted.'" Pet. App. 6a-7a (citation omitted) (quoting *Turner v. Knight*, 957 A.2d 984, 991 (Md. 2008)). The court noted the other approach "is that the statute provides a thirty-day 'grace period.'" Pet. App. 7a.

The court concluded that it would "consider the grace period approach to be more consistent with the Act's legislative history and intent. And although both interpretations of the tolling provision are reasonable, we also find that that 'grace period' approach better accommodates federalism concerns." Pet. App. 9a. The court observed that Congress needed to be clearer if it wished to "invade a historic state power by altering state statutes of limitations." *Id.*

Petitioner sought panel rehearing and rehearing *en banc*, which the court denied on July 20, 2016. Pet. App. 19a.

REASONS TO GRANT THE PETITION

There is a well-recognized and entrenched conflict of authority on whether the suspension approach or the grace period approach reflects the correct interpretation of § 1367(d). The Sixth Circuit, along with the high courts of Maryland and Minnesota, has adopted the suspension approach. The high courts of California and now the District of Columbia have adopted the grace period approach.

The Court should grant certiorari in this case to resolve the conflict. The question presented is important and recurs frequently—it determines the limitations period for any state-law claim over which a federal court declines supplemental jurisdiction. As this Court has explained, Congress intended § 1367 to provide a clear and comprehensive set of rules to govern supplemental jurisdiction over state-law claims in federal court. That clarity has been frustrated by the split of authority on the basic issue of how long a

plaintiff has to refile her state-law claims in the event that they are dismissed by the federal court. Moreover, further percolation is unnecessary—the arguments on both side of the split have been fully aired by numerous courts. And this case is an ideal vehicle because its outcome turned entirely on the decision of which interpretation to adopt.

Finally, the decision below warrants review because it is wrong. The grace period approach adopted by the D.C. Court of Appeals is contrary to the plain text of the statute, inconsistent with the manner in which this Court has long understood "tolling" to work, and at odds with the policy choices Congress made in § 1367.

I. The Lower Courts Are Split on the Meaning of "Tolling" in § 1367(d).

A. The High Courts of Maryland and Minnesota, Along With The Sixth Circuit, Have Held that § 1367(d)'s Tolling Rule Suspends the Limitations Period, Pausing Its Clock Until Thirty Days After the State-Law Claim Is Dismissed.

The high courts of Maryland and Minnesota, along with the Sixth Circuit, have adopted the suspension approach: they agree that the word "tolled" in § 1367(d) means that the limitations period is suspended while the state-law claim is pending, and that it begins to run again thirty days after the state-law claim is dismissed.

The Maryland Court of Appeals (Maryland's high court) adopted the suspension approach in *Turner v. Knight*, 957 A.2d 984 (Md. 2008). In *Turner*, the court

observed that "the courts are not in agreement as to which is the proper reading" with respect to § 1367(d). 957 A.2d at 990. The court concluded that "tolling" most commonly meant a suspension, noting that the common law defined a "'tolling statute' as '[a] law that interrupts the running of a statute of limitations in certain situations.'" *Id.* at 992 (quoting *Black's Law Dictionary* (8th ed. 2004)).

Moreover, the court cited this Court's decision in *Chardon v. Fumero Soto*, 462 U.S. 650 (1983), where the Court construed "the word 'tolling' to mean that, during the relevant period, the statute of limitations ceases to run." 462 U.S. at 652 n.1. The court reasoned that Congress "used the word 'tolled' without qualification, presumably aware of how that word had previously been interpreted and applied by the Supreme Court . . . and we can find nothing in the legislative history of the statute to indicate that it intended any other meaning." *Turner*, 958 A.2d at 992.

The Minnesota Supreme Court likewise rejected the grace period approach and adopted the suspension approach. *See Goodman v. Best Buy, Inc.*, 777 N.W.2d 755, 759 (Minn. 2010). The court expressly held that the suspension approach "is the only reasonable interpretation given the complete text of section 1367(d)." *Id.* at 760. That is so, the court reasoned, because the grace period approach only gives meaning to § 1367(d) if a condition precedent exists: "tolling occurs only if the period of limitations expires while the claim is pending in federal court or during the 30 days post-dismissal." *Id.* at 759-60. This cannot be correct, the court said, because "[t]he statute . . . uses

unconditional language: '[t]he period of limitations . . . *shall* be tolled.'" *Id.* at 760 (quoting 28 U.S.C. § 1367(d) (first bracket added) (emphasis in original)).

To illustrate, the Minnesota Supreme Court explained that the grace period approach requires § 1367(d) to be read as "the period of limitations . . . shall be tolled while the claim is pending and for a period of 30 days after it is dismissed [*if the period of limitations expires during the pendency of the claim in federal court or within 30 days after dismissal*]." *Id.* (emphasis and alterations in original). The court reasoned that this approach "creat[es] an ambiguity where none exists by reading missing words or conditions into the statute. Such reasoning would make any statute ambiguous." *Id.*

In so holding, the Minnesota court acknowledged other courts had adopted the grace period approach, but observed that "the courts rejecting the suspension-of-the-clock interpretation did not perform a textual analysis of the wording; rather, those courts rejected the interpretation for policy reasons." *Id.* at 761. "The fact that some state appellate courts have, for policy reasons, chosen a different statutory interpretation, does not dissuade us from reading the plain language of section 1367(d) and concluding that it unambiguously means that the running of the limitations period is suspended, and not merely the expiration of the limitations period." *Id.*

The Sixth Circuit reached the same conclusion in *In re Vertrue Inc. Marketing & Sales Practices Litigation*, 719 F.3d 474 (6th Cir. 2013). In *Vertrue*, an initial round of class action litigation resulted in the district

court dismissing the federal claims and declining to exercise supplemental jurisdiction over the remaining state-law claims. 719 F.3d at 477. Later, multiple class actions were filed raising additional federal claims along with the same state-law claims over which the previous federal court had declined jurisdiction. *Id.* Those cases were consolidated by a MDL Panel, and the defendant sought dismissal, contending that the state-law claims were untimely under § 1367(d)'s tolling provision because they had not been refiled within thirty days of dismissal. *Id.* at 479-80.

The Sixth Circuit reversed and held that § 1367(d) tolls the period by suspending it when the state-law claim is pending in federal court, to begin running again thirty days after dismissal of the state-law claim by the federal court. *Id.* at 481. The court reasoned that the district court's "approach fails to give any operative effect to § 1367(d) in a number of cases in which the state statute of limitations does not expire during the course of federal litigation." *Id.* The latter is so because the thirty-day grace period is meaningless if it runs concurrent to an unexpired limitations period. In conclusion, the Sixth Circuit noted that it was "persuaded that the suspension approach properly gives effect to both § 1367(d) and the state statute of limitations." *Id.*

B. The High Courts of the District of Columbia and California Have Adopted the Grace Period Approach, Which Provides Only Thirty Days to Refile Suit.

In the decision below, the D.C. Court of Appeals rejected the suspension approach and adopted the

grace period approach. The high court of California and several intermediate appellate courts reached the same conclusion as the court below.[2]

The California Supreme Court adopted the grace period approach in *City of Los Angeles v. County of Kern*, 328 P.3d 56 (Cal. 2014). The court observed that "[s]ection 1367(d) has confounded courts nationally and in California, with two near-equal camps emerging." 328 P.3d at 58. The court began by conceding that "[a]s a purely textual matter, . . . the most natural reading of the [statute] . . . is that the period's running shall be suspended, and shall restart 30 days after dismissal." *Id.* at 60. But the court noted that Congress had not specified whether the tolling abated the running of the period or its expiration, *id.* at 61, and reasoned that the suspension interpretation "could delay for years resolution of claims," *id.*

Next the California court turned to legislative history, citing an article by three professors who assisted in the drafting of § 1367 who noted Congress's intent to codify the American Law Institute's ("ALI's") recommendations. *Id.* at 62-63. In addition, the court reasoned that the grace period approach "hews most closely to a purpose of preventing the loss of claims,"

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[2] The D.C. court observed that several federal Courts of Appeals "apparently agree" with its interpretation, *see* Pet. App. 8a, although none of those cases squarely analyzed the question. *See Hedges v. Musco*, 204 F.3d 109, 123 (3d Cir. 2000); *Seabrook v. Jacobson*, 153 F.3d 70, 72 (2d Cir. 1998); *Beck v. Prupis*, 162 F.3d 1090, 1099-1100 (11th Cir. 1998).

id. at 63, because "[t]he suspension view . . . affects limitations periods more broadly," *id.* at 64.

At this point, the court noted that because the textual analysis and the legislative history analysis suggested different results, federalism concerns must resolve the question. *Id.* Those concerns, the court reasoned, required adoption of the grace period approach, because "[i]t alters the limitations period only when necessary to prevent a time bar." *Id.* at 65.[3]

Intermediate appellate courts in Florida, North Carolina, Georgia, New Jersey, and Ohio have also adopted the grace period approach. *See Dahl v. Eckerd Family Youth Alts., Inc.*, 843 So. 2d 956, 958 (Fla. Dist. Ct. App. 2003); *Harter v. Vernon*, 532 S.E.2d 836, 839-40 (N.C. Ct. App. 2000); *Gottschalk v. Woods*, 766 S.E.2d 130, 136-38 (Ga. Ct. App. 2014); *Berke v. Buckley Broad. Corp.*, 821 A.2d 118, 123-24 (N.J. Super. Ct. App. Div. 2003); *Smith v. Erie Cty. Sheriff's Dep't*, No. E-15-028, __ N.E.3d __, 2016 WL 618112 (Ohio Ct. App. Feb. 12, 2016).

* * *

As these cases illustrate, there is a stark and acknowledged split among the lower courts on the

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[3] The Supreme Court of the Northern Mariana Islands has also adopted the grace period approach. *Juan v. Commonwealth*, No. 99-032, 2001 WL 34883536, at *4 (N. Mar. I. Nov. 19, 2001). The Northern Mariana Islands is treated as a "State" for purposes of § 1367, *see* 28 U.S.C. § 1367(e), and its Supreme Court is treated as a State high court for purposes of this Court's certiorari jurisdiction, 48 U.S.C. § 1824(a).

meaning of § 1367(d)'s tolling provision. This case presents the Court with an ideal vehicle to resolve the split, as the outcome turns upon which of the competing interpretations is adopted: Petitioner had nearly two years remaining on her limitations clock when she filed her federal suit, and she filed her state suit fifty-nine days after dismissal of the federal suit, so her suit plainly would not have been barred under the suspension approach. The Court should grant certiorari in this case in order to harmonize these divergent interpretations of § 1367(d).

II. The Question Presented Is Important.

Review is also warranted because the question presented is an important one that goes to a basic issue of federal jurisdiction: how long does a plaintiff have to refile her state-law claw claims in the event that a federal court declines to exercise supplemental jurisdiction over them? That issue is no merely theoretical federal-courts puzzle. It arises in every case in which a district court ultimately declines to exercise supplemental jurisdiction, and it will continue to arise until it is resolved by this Court.

It is particularly important to have a definitive answer because Congress enacted § 1367(d) to "provid[e] a straightforward tolling rule" which "promotes fair and efficient operation of the federal courts and is therefore conducive to the administration of justice." *Jinks v. Richland Cty.*, 538 U.S. 456, 463 (2003) (upholding constitutionality of § 1367(d)). That interest in an "efficient," "straightforward tolling rule" is thwarted when there are two conflicting legal rules for calculating the length of the tolling period.

Congress's chosen policy regarding the effect of bringing a state law claim in federal court should not depend on the vagaries of which state is interpreting that policy. *See id.* (noting inefficiency of regime in which state courts varied on treatment of state-law claims over which federal courts declined supplemental jurisdiction).

The split also presents a significant opportunity for various permutations of forum shopping. For example, Maryland has adopted the suspension approach while the District of Columbia has adopted the grace period approach. Thus, a plaintiff who could refile a dismissed state law claim in either Maryland or the District of Columbia would choose Maryland to obtain the more favorable suspension rule. Indeed, there is already a conflict of authority between the state and federal courts in the same jurisdiction. The Sixth Circuit in *Vertrue* has adopted the suspension approach while an Ohio court in *Smith* has adopted the grace period approach.[4] *Compare Vertrue*, 719 F.3d at 481 (adopting suspension approach) *with Smith*, 2016 WL 618112, at *4 (rejecting *Vertrue* and emphasizing that "we are not bound by rulings on federal statutory or constitutional law made by a federal court other than the United States Supreme Court." (internal quotation marks omitted)). That conflict results in different statutes of limitations on state-law claims depending on whether the claim is in federal or state court, which is an

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[4] It is unlikely this question would reach the Ohio Supreme Court, given that future plaintiffs in Ohio state court would likely acquiesce to *Smith* and file suit within 30 days of a federal dismissal.

outcome this Court has long sought to avoid. *Cf. Guar. Tr. Co. of N.Y. v. York*, 326 U.S. 99, 111 (1945) (federal courts must borrow state statutes of limitations in diversity cases because the use of lengthier federal limitations periods "would be a mischievous practice" which "would promote the choice of United States rather than of state courts in order to gain the advantage of different laws" (internal quotation marks omitted).

Section 1367 represents Congress's comprehensive attempt to address the issue of supplemental jurisdiction. This Court should ensure that this important issue is uniformly resolved in the state and federal courts around the country.

III. The D.C. Court of Appeals' Decision is Wrong.

Finally, this Court should grant review because the D.C. Court of Appeal's interpretation of § 1367(d) is contrary to the statute's plain text.

Section 1367(d) provides that "[t]he period of limitations . . . shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period." 28 U.S.C. § 1367(d). The question presented in this case boils down to what did Congress mean when it used the word "tolled"?

That question has an easy answer. "Tolled" means "suspended." Black's Law Dictionary defines "tolling statute" as "[a] law that interrupts"—*i.e.*, suspends—"the running of a statute of limitations in certain situations." *Black's Law Dictionary* 1716 (10th ed. 2014). And this Court's decisions have understood

"tolled" to mean "suspended." *CTS Corp. v. Waldburger*, 134 S. Ct. 2175, 2183 (2014) (characterizing equitable tolling as "a doctrine that 'pauses the running of, *or "tolls,"* a statute of limitations'") (emphasis added)); *Chardon*, 462 U.S. at 652 n.1 (defining "'tolling' to mean that, during the relevant period, the statute of limitations ceases to run"); *Am. Pipe & Constr. Co. v. Utah*, 414 U.S. 538, 554 (1974) (characterizing tolling as "suspend[ing] the applicable statute of limitations.").

And if it were not obvious from that definition of "tolled," this Court has explained that when the tolling period ends, the clock re-starts from where it left off—precisely as mandated by the suspension approach. *United States v. Ibarra*, 502 U.S. 1, 4 n.2 (1991) (*per curiam*) ("Principles of equitable tolling usually dictate that when a time bar has been suspended and then begins to run again upon a later event, the time remaining on the clock is calculated by subtracting from the full limitations period whatever time ran before the clock was stopped."). Indeed, in discussing § 1367(d) in an earlier case, this Court observed that its effect was to "toll the state statute of limitations for 30 days *in addition to however long the claim had been pending in federal court.*" *Raygor v. Regents of the Univ. of Minn.*, 534 U.S. 533, 542 (2002) (emphasis added). While that discussion was dicta, it reflects the fact that the word "tolled" unambiguously means "suspend" in this context.[5]

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[5] In *Raygor*, this Court held that Congress had not intended § 1367(d) to apply to state-law claims brought in federal court against states that had not waived sovereign immunity

In contrast, the grace period approach finds no support whatsoever in the statute's text. Even if there were some legal support for the idea that "toll" means "*continues* running" (and there is none), the notion that the statute merely extends the expiration date makes no sense in light of the phrase "while . . . and for a period of." 28 U.S.C. § 1367(d). It makes sense to talk about a *suspension* in terms of a period of time, with a start and end point; it makes no sense to speak of an *expiration* date in these terms. An expiration date occupies a single point in time. The grace period approach is simply irreconcilable with the statutory text.

The D.C. Court of Appeals did not undertake any serious analysis of the statutory text, and instead adopted the "grace period" approach based on its view that such an approach would be superior policy. Of course, the D.C. Court of Appeals had no warrant to ignore statutory text so clear; but even if the text were ambiguous, the D.C. Court of Appeals overlooked that the suspension approach has sound policy rationales.

In the first place, the House Report accompanying § 1367(d) explained that its "purpose" was not to offer a mere 30-day grace period, but "to prevent the loss of claims to statutes of limitations where state law might fail to toll the running of the period of limitations *while a supplemental claim was pending in federal court.*" H.R. Rep. No. 101-734 at 30 (1990), *as reprinted in* 1990 U.S.C.C.A.N. 6860, 6876 (emphasis added). Only the

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where that state-law claim was dismissed on Eleventh Amendment grounds. 534 U.S. at 548.

suspension approach serves Congress's "purpose" of "toll[ing]" "while a supplemental claim was pending." *Id.*

Congress's decision was sensible given that the grace period approach has the perverse effect of treating plaintiffs who diligently file their federal claims the same as plaintiffs who wait to file suit until the last day of the limitations period: both types of plaintiffs get only 30 days after the federal court declines to exercise jurisdiction over state-law claims. And when plaintiffs diligently file federal lawsuits with time to spare on their state-law claims, there are strong reasons to give the plaintiffs more than a thirty-day grace period to refile in state court. During that time, a plaintiff must also decide whether to appeal the dismissal of her federal claim, *see* Fed. R. App. P. 4(a) (requiring appeal be filed within 30 days of final judgment). She may also be required to find a new lawyer admitted to appear in state court and to adjust her litigation strategy or assess the evidence in light of the opinion issued by the federal court. And all of this must be done while the plaintiff determines whether it is cost-effective (or whether the plaintiff even has the resources) to continue pursuing litigation. Refiling is therefore not merely a matter of swapping out the federal court case caption on the complaint with the state court case caption, as proponents of the grace period approach contend.

In short, "tolled" means "suspended," and the grace period approach comports with neither the text nor the purpose of § 1367(d).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

Appendix A

DISTRICT OF COLUMBIA COURT OF APPEALS

Filed 4/7/16

No. 15-CV-0243

STEPHANIE C. ARTIS, APPELLANT,

v.

DISTRICT OF COLUMBIA, APPELLEE.

Appeal from the Superior Court
of the District of Columbia
(CAB-5275-14)

(Hon. Herbert B. Dixon, Jr., Trial Judge)

(Argued February 2, 2016 Decided April 7, 2016)

Donald M. Temple for appellant.

Donna M. Murasky, Senior Assistant Attorney General for the District of Columbia, with whom *Karl A. Racine*, Attorney General for the District of Columbia, *Todd S. Kim*, Solicitor General, and *Loren L. AliKhan*, Deputy Solicitor General, were on the brief, for appellee.

Before FISHER and BLACKBURNE-RIGSBY, *Associate Judges*, and PRYOR, *Senior Judge*.

PRYOR, *Senior Judge*: Appellant, Stephanie Artis, asks us to reverse the trial court's ruling on appellee's,

the District of Columbia (the District), motion to dismiss because, she argues, it misinterpreted the word "tolling" in 28 U.S.C. § 1367(d), and, as a consequence, erroneously limited her time to file her claim in Superior Court. Jurisdictions differ as to the meaning of "tolling" in 28 U.S.C. § 1367(d), and we consider the term to be ambiguous. In light of that ambiguity, we conclude that the "grace period" approach, advocated by the appellee, is more consistent with statute's context and purpose. Therefore, we affirm the judgment dismissing appellant's complaint as untimely.

I. Statement of Facts

Appellant's complaint arose from her November 15, 2010 termination from the District's Department of Health (DOH). Beginning in August 2007, appellant was employed, in a temporary status, as a DOH code inspector. A contentious relationship evolved with her supervisor, Gerard Brown, and she concluded he had singled her out for unfair treatment in the workplace. On April 17, 2009, appellant took her first administrative step against Mr. Brown and DOH by filing a discrimination claim before the U.S. Equal Employment Opportunity Commission. While that claim was pending appellant also filed a series of grievances against Mr. Brown challenging several notices of proposed infractions against her and alleging that Brown violated other employee rights regulations.

On November 15, 2010, appellant discovered that DOH terminated her temporary employment as a code inspector. In January 2011, appellant filed a final grievance alleging her termination was retaliation for

her strained relationship with the agency and Mr. Brown.

On December 16, 2011, appellant initiated a civil suit against the District in the United States District Court for the District of Columbia. Therein she alleged her termination violated Title VII of the Civil Rights Act of 1964[1] and that the District Court had supplemental jurisdiction under 28 U.S.C. § 1367(a) (1990) to hear her claims based on the District's Whistleblower Act,[2] False Claims Act,[3] and her common law claim for wrongful termination against public policy. *See Artis v. District of Columbia*, 51 F. Supp. 3d 135 (D.D.C. 2014).

On June 27, 2014, the court granted the District's motion for judgment on the pleadings as to appellant's federal employment discrimination claim. *Id.* at 139-141. The court further found that since it dismissed the sole federal claim as facially deficient, it had no basis to exercise jurisdiction over the remaining claims arising under District of Columbia law. *Id.* at 141-42 (discussing discretionary nature of pendent jurisdiction) (citing 28 U.S.C. § 1367I(3)).

On August 25, 2014, fifty-nine days after dismissal from federal district court, appellant filed her remaining claims in the Superior Court. In a motion

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[1] 42 U.S.C. § 2000e-5 (2009).

[2] D.C. Code § 1-615.54 (2001).

[3] D.C. Code § 2-308.16 (2001) (recodified as D.C. Code § 2-381.04 (2009)).

for dismissal—or alternatively summary judgment—the District alleged appellant's claims were time barred based on the respective statutes of limitation and 28 U.S.C. § 1367(d). *Artis v. District of Columbia*, 2014-CA-005275B (January 29, 2014). The trial judge agreed, finding 28 U.S.C. § 1367(d) does not suspend state statutes of limitations at the time of the unsuccessful federal filing, but rather creates a thirty-day period for a claimant to file actions over which the U.S. District Court lacked jurisdiction. *Id.*

II. Discussion

A.

It is necessary, in order to answer the question presented in this case, to resolve the meaning of "tolled" in 28 U.S.C. § 1367(d). Appellant argues the trial court erroneously interpreted 28 U.S.C. § 1367(d)'s plain language, which provides:

> [t]he period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.

There were nearly two years remaining on the statute of limitations when appellant filed her suit in the United States District Court, and she asserts she had that period (plus thirty days) to file her claims in the Superior Court.

Thus, appellant urges us to adopt the reasoning of the Maryland Court of Appeals in *Turner v. Knight*, 957 A.2d 984 (Md. 2008), and find that "tolled" means to suspend the local statute of limitations at the point the federal suit was filed. The District, relying primarily on the California Supreme Court's decision in *City of Los Angeles v. County of Kern*, 328 P.3d 56 (Cal. 2014), instead urges us to affirm the trial court's finding that, in the context of the statute's language, purpose, and history, "tolled" means a thirty-day "grace period" will apply if the limitations period for the state based claims expires while the claim is pending in the federal court. Here, according to the District, the limitations period had expired while the federal suit was pending, so appellant had only thirty days to file in Superior Court. The District argues this fulfills Congress's intent by giving a litigant an opportunity to re-file claims over which the federal court lacked jurisdiction without requiring duplicative filings or infringing on the rights of states to establish their own statutes of limitation.

When interpreting statutory language, we must "look first to the plain language of a statute to determine its meaning, and favor interpretations consistent with the plain language. . . ." *Stevens v. ARCO Management of Washington, D.C., Inc.*, 751 A.2d 995, 998 (D.C. 2000) (citing *Francis v. Recycling Solutions, Inc.*, 695 A.2d 63, 72 (D.C. 1997); *Downs v. District of Columbia Police and Firefighters Retirement and Relief Bd.*, 666 A.2d 860, 861 (D.C. 1995)). "Where the plain meaning of the statutory language is unambiguous, the intent of the legislature is clear, and judicial inquiry need go no further." *Id.*; *see*

also United States v. Goldenberg, 168 U.S. 95, 102-03 (1897) ("The primary and general rule of statutory construction is that the intent of the lawmaker is to be found in the language that [it] has used."). But, even if the words of a statute have "superficial clarity, a review of the legislative history or an in-depth consideration of alternative constructions that could be ascribed to statutory language may reveal ambiguities that the court must resolve." *Lincoln Hockey LLC. V. District of Columbia Dep't of Emp't Servs.*, 810 A.2d 862, 868 (D.C. 2002) (citing *Hively v. District of Columbia Dep't of Emp't Servs.*, 681 A.2d 1158, 1161 (D.C. 1996)); *see also Peoples Drug Stores, Inc. v. District of Columbia*, 470 A.2d 751, 753 (D.C. 1983) (en banc) (if statute is ambiguous "our task is to search for an interpretation that makes sense of the statute and related laws as a whole[]"); *Dolan v. United States Postal Serv.*, 546 U.S. 481, 486 (2006) ("A word in a statute may or may not extend to the outer limits of its definitional possibilities. ").

B.

As stated, the parties have advanced two respective positions which are consistent with the competing approaches that have evolved nationally relating to the tolling provision of the statute presented. One interpretation is illustrated by *Turner*. In adopting the "suspension" approach, the *Turner* court, relying largely on the California Court of Appeal's decision in *Bonifield v. County of Nevada*, 94 Cal. App. 4th 298, 303-04 (2001) (quoting *Woods v. Young*, 807 P.2d 455, 461 (1991)), likened tolling to a "clock that is stopped

and then restarted[,]" *Turner*, *supra*, 957 A.2d at 991, and reasoned that the *Bonifield* suspension approach was more consistent with Supreme Court precedent. *Id.* at 992 (citing *Chardon v. Fumero Soto*, 462 U.S. 650, 661 (1983) (interpreting tolling statute in 42 U.S.C. § 1983 to suspend, rather than renew, limitation period)); *see also Goodman v. Best Buy, Inc.*, 755 N.W.2d 354 (Minn. App. 2008)[4]; *Oleski v. Dep't of Pub. Welfare*, 822 A.2d 120, 124 (Pa. Cmwlth. Ct. 2003).

On the other hand, a different approach is that the statute provides a thirty-day "grace period" "allowing claims that would otherwise have become barred to be pursued in state court if refiled no later than 30 days after federal court dismissal."[5] *Cf. City of Los Angeles*, *supra*, 328 P.3d at 58 (cited with approval in *Gottschalk v. Woods*, 766 S.E.2d 130, 136 (Ga. App. 2014)); *see also Weinrib v. Duncan*, 962 So.2d 167 (Ala. 2007); *Dahl v. Eckerd Family Youth Alternatives, Inc.*, 843 So.2d 956 (Fla. App. 2003); *Berke v. Buckley Broad. Corp.*, 821 A.2d 118 (N.J. Super. 2003); *Harter v. Vernon*, 532 S.E.2d 836 (N.C. App. 2000); *Juan v.*

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[4] In *Goodman*, *supra*, 755 N.W.2d at 356-57, the Minnesota Court of Appeals also noted a third possible interpretation of the tolling provision in § 1367(d): that it served to "annul" the state statute of limitation and replace it with thirty days following the dismissal from federal district court. This position was not argued by either party and we decline to adopt it here.

[5] *See Chardon v. Fumero Soto*, 462 U.S. 650, 661 (1983) (recognizing that "tolling effects" include suspension, renewal, and extension of filing period).

Commonwealth, 2001 WL 34883536 (N. Mar. I. Nov. 19, 2001).

Additionally, federal circuit courts of appeal that have analyzed the tolling provision of § 1367(d) apparently agree that it provides a thirty-day grace period. *Hedges v. Musco*, 204 F.3d 109, 123 (3rd Cir. 2000) (finding § 1367(d) ensures plaintiff has "at least thirty days after dismissal to refile in state court") (citing *Seabrook v. Jacobson*, 153 F.3d 70, 72 (2d Cir. 1998); *see also Beck v. Prupis*, 162 F.3d 1090, 1099-1100 (11th Cir. 1998) (dismissal under § 1367 tolls statute of limitations for thirty-days)).

Turning to the legislative history, the Judicial Improvements Act of 1990 (the Act), Pub. L. No. 101-650 § 310 (Dec. 1, 1990), 104 Stat. 5089, 5113-5114, was intended to provide "just, speedy, and inexpensive resolution of civil disputes[.]" Sen. Rep. No. 101-416, 2d Sess. P. 1 (Aug. 3, 1990). As part of the Act, § 1367(d)'s purpose was "to prevent the loss of claims to statutes of limitations where state law might fail to toll the running of the period of limitations while a supplemental claim was pending in federal court." H.R. Rep. No. 101-734, 2d Sess., p. 30 (1990).

It is apparent that in drafting subsection (d) of the Act, Congress incorporated recommendations from the academic community, specifically the American Law Institute (ALI). H.R. Rep. No. 101-734, 2d Sess., pp. 15-17, 27 (1990), reprinted in 1990 U.S. Code Cong. & Admin. News, pp. 6861-6862, 6873. Thus we are convinced subsection (d) was meant to reflect the ALI's recommendation that the Act should provide litigants

relief from a time-bar to actions so long as "the state claim was (1) filed in federal court at time when it would not have been barred in state court *and* (2) refiled in state court within 30 days after dismissal, absent a longer state rule." *City of Los Angeles*, *supra*, 328 P.3d at 63 (citing Study of the Division of Jurisdiction Between State and Federal Courts (Am. Law. Inst.) (1969)).

Accordingly, we consider the grace period approach to be more consistent with the Act's legislative history and intent. And although both interpretations of the tolling provision are reasonable, we also find that the "grace period" approach better accommodates federalism concerns. We have previously held that "[i]f Congress intends to alter the usual constitutional balance between the States and the Federal Government, it must make its intention to do so unmistakably clear in the language of the statute." *Jones v. District of Columbia*, 996 A.2d 834, 842 (D.C. 2010) (quoting *Gonzaga Univ. v. Doe*, 536 U.S. 273, 282 (2002)). Turning to the present statute under consideration, § 1367(d) appears to invade a historic state power by altering state statutes of limitation. *See Raygor v. Regents of Univ. of Minnesota*, 534 U.S. 533, 543-44 (2002); *City of Los Angeles*, *supra*, 328 P.3d at 64. As such, we find that the "grace period" approach hazards significantly less impact on "local statutes of limitation" than the suspension approach. *Stevens*, *supra*, 751 A.2d 996; *see also Raygor*, *supra*, 534 U.S. at 542 (favoring construction of § 1367(d) with least impact on state sovereignty). Thus, not only are we satisfied that the "grace period" approach conforms

with § 1367(d)'s purpose and history, we also find it consistent with our presumption favoring narrow interpretations of federal preemption of state law. *Traudt v. Potomac Elec. Power Co.*, 692 A.2d 1326, 1332 (D.C. 1997) (scope of preemptive effective must be narrowly construed) (citing *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996)); *see also Bates v. Dow Agrosciences LLC*, 544 U.S. 431, 449 (2005) (noting court's duty to accept reading disfavoring preemption where equally plausible to other interpretations).

This is not the first time we have been asked to interpret 28 U.S.C. § 1367(d). In *Stevens, supra*, 751 A.2d at 998-99, we reversed a trial court finding that § 1367(d) did not permit appellant to file her dismissed action in Superior Court after the district court determined it lacked subject-matter jurisdiction. There, appellant filed her underlying tort claim in Superior Court within thirty days of its dismissal from the district court, making it unnecessary for us to expressly interpret the meaning of "tolled." Nevertheless, we commented that application of § 1367(d)'s thirty day extension to the "local statute of limitations" was necessary to satisfy the statute's purpose of allowing litigants to "*economically* resolve related matters in a single forum" and "increase the *administrative efficiency* of the civil litigation process" without having to file "duplicative and wasteful protective suits in state court." *Id.* at 996 & 1002 (citations omitted) (emphasis added).

We conclude that the "grace-period" approach reflects the legislative history and intent of the Act,

conforms to our presumption against preemption, and is consistent with our previous treatment of that statute in *Stevens*. As such, we hold that the tolling provision of § 1367(d) applies a thirty-day "grace period" to allow litigants to re-file claims that otherwise would have become barred in Superior Court. Applying that rule here, we agree with the District that Ms. Artis failed to comply with the statute of limitations that governed her claims based on District of Columbia law, and affirm the ruling of the trial court.

Affirmed.

Appendix B

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

Filed 1/29/2015

STEPHANIE C. ARTIS, Plaintiff,	)	
	)	Case No. 2014 CA
v.	)	005275 B
	)	Judge Herbert B.
	)	Dixon, Jr.
DISTRICT OF COLUMBIA, Defendant.	)	

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT

This matter is before the court upon Defendant District of Columbia's *Motion to Dismiss or, in the Alternative, for Summary Judgment*, in which the District argues that 1) Plaintiff Stephanie Artis' complaint is barred by the statute of limitations as she should have filed her complaint on or before July 27, 2014, and not August 25, 2014 and 2) the plaintiff's failure to timely file her affidavit of service requires her complaint to be dismissed without prejudice.

In opposition, Plaintiff Stephanie Artis counters, among other things, that 1) the plain language and reading of 28 U.S.C. § 1367(d) supports the conclusion that the applicable statute of limitations stopped tolling while her complaint was pending in federal court and

resumed tolling upon its dismissal with 30 days added to the limitations period; 2) the dismissal of the plaintiff's complaint would be inappropriate where the defendant was timely served; and 3) Defendant District of Columbia had actual knowledge of the plaintiff's lawsuit and claims in light of the parties' prior litigation in the federal court.

By way of background, on December 16, 2011, Plaintiff Stephanie Artis filed a complaint against the District of Columbia in the United States District Court for the District of Columbia bringing claims for gender discrimination in an employment context in violation of Title VII of the Civil Rights Act of 1964, retaliation in violation of the D.C. False Claims Act, violation of the D.C. Whistleblower Protection Act, wrongful discharge in violation of public policy, and intentional infliction of emotional distress. On June 27, 2014, Judge James Boasberg issued a memorandum opinion finding that "no reasonable jury could conclude that [Plaintiff] Artis was subjected to gender discrimination while employed by the District" and then dismissing the plaintiff's remaining state law claims for lack of subject-matter jurisdiction pursuant to 28 U.S.C. § 1367(c)(3), *Artis v. District of Columbia*, No. 1:11-cv-02241-JEB, 2014 U.S. Dist. LEXIS 87457, at *1 (D.D.C. June 27, 2014). Thereafter, on August 25, 2014, the plaintiff filed the underlying complaint against Defendant District of Columbia alleging violation of the D.C. Whistleblower Protection Act, wrongful discharge in violation of public policy, and retaliation in violation of the D.C. False Claims Act.

Here, the court is not persuaded that 28 U.S.C. § 1367(d) can be read to extend the limitations period of a plaintiff's dismissed claim or claims beyond 30 days after dismissal. Section 1367 generally deals with the scope and extent to which federal district courts can exercise supplemental jurisdiction over claims for which those courts ordinarily would not have original jurisdiction via a federal question (*i.e.*, 28 U.S.C. § 1331) or party diversity (*i.e.*, 28 U.S.C. § 1332). In particular, subsection (d) of 28 U.S.C. § 1367 states that the limitations period for any claim asserted under the federal courts' supplemental jurisdiction "shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period."

While the plaintiff's reading of subsection (d) stresses the language of "while the claim is pending," the court strongly believes that such a reading would only be reasonable if the plaintiff were to be barred or otherwise prevented from pursuing her state law claims in a state court while the federal court proceeding is pending. Indeed, this member of the court is not aware of any statute that would prevent a plaintiff in the District from filing a complaint in the Superior Court presenting claims duplicative to those state law claims pending before a federal court.[1]

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[1] It is important to note that while the cross-filing of state law claims in federal court and state court (particularly the Superior Court for the District of Columbia) is not impermissible, such a cross-filing of claims is generally disfavored by courts as "wasteful" and being "against [the interests of] judicial efficiency."

Against this legal background, the court interprets the clause "while the claim is pending" to toll the applicability of a defendant's statute of limitations defense in those instances where the plaintiff subsequently proceeds to file suit in state court and the applicable limitations period has passed, yet a timely filed complaint alleging the same state law claims is pending in federal court.

Hence, should it arise that a plaintiff has not filed his state law claims in state court before the claim bestowing federal jurisdiction has been dismissed, the clause "for a period of 30 days after it is dismissed" and its attached proviso would necessarily apply. On such an occasion, § 1367(d) would only toll the limitations period for each claim for a period of 30 days after the dismissal.[2] In understanding that a statute of

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Stevens v. Arco Mgmt. of Wash. D.C., Inc., 751 A.2d 995, 1002 (D.C. 2000).

[2] While the statutory language of § 1367(d) is not unambiguous and some states have endorsed the plaintiff's interpretation of this subsection, a survey of other jurisdictions' interpretations of this statute tends to support this court's interpretation of § 1367(d) as only providing a 30-day grace period. *See Gottschalk v. Woods*, 329 Ga. App. 730, 740 (2014) (adopting the "grace period" approach, where a plaintiff is given a 30-day grace period to re-file otherwise expired claims, "is the most appropriate interpretation of 28 U.S.C. § 1367(d)" as this interpretation is least intrusive of a state's sovereignty); *City of Los Angeles v. County of Kern*, 174 Cal. Rptr. 3d 67, 79, 328 P.3d 56, 66 (Cal. 2014) (finding that while § 1367(d) is ambiguously worded, a "grace period construction cleaves closest to the goal of avoiding the loss of claims that otherwise would be barred, while impinging least on state sovereign prerogatives to establish statutes of limitations");

limitation for a state law claim is a creature of the relevant state law, § 1367(d) expressly makes this 30-day period inapplicable where state law would

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Weinrib v. Duncan, 962 So. 2d 167, 170 (Ala. 2007) (interpreting § 1367(d) as to toll the applicable statute of limitations for 30 days after the dismissal of the state law claims (citing *Roden v. Wright*, 611 So. 2d 333 (Ala. 1992))); *Berke v. Buckley Broad. Corp.*, 359 N.J. Super. 587, 595, 821 A.2d 118, 123-24 (App, Div. 2003) (agreeing with the grace period interpretation and finding that "the import of the statute is simply to toll the running of the state statute of limitations from its customary expiration date until the expiration of a thirty-day period following conclusion of the federal action, that is, to provide a thirty-day grace period"); *Dahl v. Eckerd Family Youth Alternatives*, 843 So. 2d 956, 958 (Fla. Dist. Ct. App. 2003) (endorsing a "grace period" interpretation of 28 U.S.C. § 1367(d)); *Juan v. Commonwealth*, 2001 MP 18, ¶ 17, 6 N.M.I. 322, 327 (holding that "§ 1367(d) gives a party no more than a 30-day window of opportunity, after dismissal from the District Court, to commence action in the Superior Court"); *Harter v. Vernon*, 139 N.C. App. 85, 91, 532 S.E.2d 836, 840, *appeal dismissed and disc. review denied*, 353 N.C. 263, 546 S.E.2d 97 (2000) (stating that pursuant to 28 U.S.C. § 1367(d), "the state period of limitations for a plaintiff's pendent state claims is tolled for a period of thirty days after the federal district court has dismissed the plaintiff's claims"). *But see Goodman v. Best Buy, Inc.*, 777 N.W.2d 755, 760 (Minn. 2010) (concluding that the only reasonable interpretation of 28 U.S.C. § 1367(d), wherein "the running of the limitations period, not merely the expiration of the limitations period, is suspended while the claim is pending in federal court and for 30 days after dismissal by the federal court" with the limitations clock resuming after the 30 days have passed); *Turner v. Kight*, 406 Md. 167, 182, 957 A.2d 984, 992-93 (Md. 2008) (holding that "§ 1367(d) must be read as adopting the suspension approach"); *Oleslci v. Dep't of Pub. Welfare*, 822 A.2d 120, 126 (Pa. Commw. Ct. 2003) (endorsing the "suspension" approach in interpreting § 1367(d)).

otherwise allow for further extension of the limitations period.

The court finds support for the District's interpretation of § 1367(d) in *Stevens v. Arco Management of Washington D.C, Inc.* 751 A.2d 995 (D.C. 2000). In that case, the plaintiff filed a complaint (including a claim of common law negligence) in federal court against the United States and an independent federal contractor. *Id.* at 996. After granting the United States' motion to dismiss, that federal court declined to exercise supplemental jurisdiction over the plaintiff's common law negligence claim concerning the independent federal contractor and thus dismissed her remaining claim. *Id.* at 996-97. As a result of this dismissal, that plaintiff filed a civil action in the Superior Court "within thirty days of the dismissal in federal court, but well beyond [the limitations period] from the date of the injury." *Id.* at 997. On appeal from the trial court's dismissal of the plaintiff's complaint on the grounds that the three-year statute of limitations had expired, the Court of Appeals reversed this dismissal, holding that "[t]he three year statute of limitations was tolled during the [pendency of the] federal case, and for thirty days following its dismissal." *Id.* at 1003.

Although the plaintiff requests that the court read § 1367(d) broader than the District does, such a broad reading is not supported by the facts, reasoning, and holding of the Court of Appeals in *Stevens*. Accordingly, upon consideration of the defendant's motion, the plaintiff's opposition, the applicable law,

and the entire record herein, it is by the court this 29th day of January 2015

ORDERED, that Defendant District of Columbia's *Motion to Dismiss or, in the Alternative, for Summary Judgment* shall be and is hereby **GRANTED**; and it is further

ORDERED, that Plaintiff Stephanie Artis' complaint shall be and is hereby **DISMISSED WITH PREJUDICE.**

/s/ Herbert B. Dixon, Jr.
Herbert B. Dixon, Jr.
Judge
(Signed in Chambers)

Copies to:

Martha J. Mullen, Esq.
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Appendix C

DISTRICT OF COLUMBIA
COURT OF APPEALS

No. 15-CV-243 July 20, 2016

STEPHANIE C. ARTIS,
Appellant,

CAB5275-14

v.

DISTRICT OF COLUMBIA,
Appellee.

BEFORE, Washington, Chief Judge; Glickman, Fisher*, Blackburne-Rigsby*, Thompson, Beckwith, Easterly, and McLeese, Associate Judges; Pryor*, Senior Judge.

ORDER

On consideration of appellant's petition for rehearing or rehearing *en banc*, it is

ORDERED by the merits division* that the petition for rehearing is denied; and it appearing that no judge of this court has called for a vote on the petition for rehearing *en banc*, it is

FURTHER ORDERED that the petition for rehearing *en banc* is denied.

PER CURIAM

Copies to:

Honorable Herbert B. Dixon, Jr.

Director, Civil Actions Branch

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Solicitor General - DC

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Supreme Court, U.S.
FILED
JAN - 4 2017
OFFICE OF THE CLERK

No. 16-460

IN THE

Supreme Court of the United States

STEPHANIE C. ARTIS,
Petitioner,

v.

DISTRICT OF COLUMBIA,
Respondent.

On Petition for a Writ of Certiorari to the District of Columbia Court of Appeals

BRIEF IN OPPOSITION

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January 4, 2017

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QUESTION PRESENTED

Whether the court below properly interpreted 28 U.S.C. § 1367(d) to provide a 30-day "grace period" for the filing of otherwise time-barred state-law claims in local court after a federal court has declined to exercise supplemental jurisdiction over them, or whether the court instead should have interpreted the provision to suspend the state statute of limitations and then add 30 days to whatever additional time remained on the limitations period when the federal suit was filed, thereby extending the limitations period years beyond that designated by state law.

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INTRODUCTION

"A State's interest in regulating the work load of its courts and determining when a claim is too stale to be adjudicated certainly suffices to give it legislative jurisdiction to control the remedies available in its courts by imposing statutes of limitations." *Sun Oil Co. v. Wortman*, 486 U.S. 717, 730 (1988). Congress may alter a state-law limitations period where "'conducive to the due administration of justice' in federal court," *Jinks v. Richland Cty.*, 538 U.S. 456, 462 (2003) (quoting *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 417 (1819)), but it does not have "unlimited power to regulate practice and procedure in state courts," *id.* at 465.

To promote the federal interest in the "fair and efficient operation of the federal courts," *id.* at 463, Congress enacted 28 U.S.C. § 1367 as part of the Judicial Improvements Act of 1990. Pub. L. No. 101-650, § 310, 104 Stat. 5089, 5113-14. As relevant here, it codified the federal courts' exercise of supplemental jurisdiction over state-law claims "that are so related to the claims in the [federal] action . . . that they form part of the same case or controversy." 28 U.S.C. § 1367(a). The statute provides that the exercise of supplemental jurisdiction is discretionary, and a federal court may decline to exercise jurisdiction over pendent state-law claims once it has resolved the federal claims in the case. 28 U.S.C. § 1367(c)(3).

Mindful that the statute of limitations could run on the pendent state-law claims while a case is pending in federal court, only to have the court decline to exercise supplemental jurisdiction over them, Congress enacted subsection (d). It provides:

> The period of limitations for any claim asserted under [supplemental jurisdiction] . . . shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.

28 U.S.C. § 1367(d).

The parties here disagree about how Section 1367(d) works. Respondent reads it to provide a disappointed federal litigant 30 days after the federal-court dismissal to file otherwise time-barred pendent state-law claims in local court (the "grace-period" approach). Petitioner believes that Section 1367(d) not only stops the state statute of limitations from ticking down at all during the pendency of the federal suit, but also tacks 30 days onto whatever time remained on the state limitations period when the federal suit was filed—however old the state-law claims by then (the "suspension" approach). The lower court agreed with respondent and adopted the grace-period approach.

Petitioner now contends that this Court should grant review, arguing that the issue presents a "recurring" and "important" question on which the lower courts are "entrenched" and "stark[ly]" divided. Pet. 4, 7, 13. But only a few state courts of last resort and one federal appellate court have interpreted Section 1367(d)'s tolling effect and, while there is a nascent disagreement between courts adopting the two approaches, it is hardly entrenched. The paucity of cases from the states' highest courts also shows that the question is not frequently recurring and, at a minimum, requires further percolation.

Nor can the question be considered important when a litigant can take advantage of Section 1367(d),

regardless of which approach the particular jurisdiction employs, by proceeding diligently and re-filing the state-law claims in local court within 30 days after the federal court declines to exercise supplemental jurisdiction. Any federal interest in standardizing a particular approach is minimal, as Congress enacted Section 1367(d) just to ensure that litigants could continue pressing state-law claims, not to override individual states' choices about their own statutes of limitations.

Indeed, the statute on its face shows that Congress meant only to set a minimum period in which state-law claims could be re-filed while allowing states to adopt longer periods as they wished. Such compelling indicia of Congress's intent demonstrate that, in any event, the court below was correct to adopt the grace-period approach.

The petition should be denied.

STATEMENT OF THE CASE

Petitioner Stephanie Artis was terminated from her position with the District of Columbia Department of Health on November 15, 2010. Pet. App. 2a. Thirteen months later, on December 16, 2011, she filed suit in the United States District Court for the District of Columbia, claiming gender discrimination in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5. Pet. App. 2a-3a. She also asserted three pendent state-law claims: retaliatory termination under the District of Columbia False Claims Act, D.C. Code § 2-381.01; retaliation under the District of Columbia Whistleblower Protection Act, D.C. Code § 1-615.54; and wrongful termination against public policy. *See* Complaint, *Artis v. District of Columbia*, No. 11-2241 (D.D.C. Dec. 16, 2011), ECF Record Document 1; Pet. App 3a.

On June 27, 2014, the district court found that "no reasonable jury could conclude that Artis was subjected to gender discrimination while employed by the District" and entered judgment against her on the Title VII claim. *Artis v. District of Columbia*, 51 F. Supp. 3d 135, 137 (D.D.C. 2014); Pet. App. 3a. Having resolved the only federal claim in the case, the district court declined to exercise supplemental jurisdiction over petitioner's state-law claims under 28 U.S.C. § 1367(c)(3). *Artis*, 51 F. Supp. 3d at 141-42; Pet. App. 3a.

Fifty-nine days later, on August 25, 2014, petitioner re-filed her state-law claims in the Superior Court of the District of Columbia. Pet. App. 3a. Respondent moved for dismissal, or in the alternative summary judgment, arguing, *inter alia*, that her state-law claims were time-barred because the three-year statute of limitations on them had run during the pendency of her federal case and she had not re-filed them in local court within the 30-day grace period provided by Section 1367(d). Pet. App. 12a. Petitioner countered that Section 1367(d) operated to suspend the state statute of limitations from running at all during the pendency of her federal litigation, such that she had 30 days from the dismissal of her federal case, plus the 23 months that were remaining on the state limitations period when she filed her federal suit. Pet. App. 12a-13a. Under this approach, petitioner would have had until July 2016 to bring the state-law claims arising from her November 2010 termination, despite the District's legislative decision to place a three-year limit on bringing these claims.

The trial court agreed with respondent and, on January 29, 2015, dismissed petitioner's state-law claims as time-barred. Pet. App. 12a-18a.

Petitioner appealed and, on April 7, 2016, the District of Columbia Court of Appeals affirmed in a unanimous opinion. Pet. App. 1a-11a. It concluded that the appropriate reading of Section 1367(d) was that it provided a 30-day "'grace period' to allow litigants to re-file claims that otherwise would have become barred in Superior Court." Pet. App. 11a. The court reached this result after considering—and rejecting—petitioner's argument that Section 1367(d) suspended the state-law limitations period during the pendency of the federal suit and for an additional 30 days thereafter. Pet. App. 5a-11a.

Petitioner sought rehearing and rehearing en banc. After no judge called for a vote on the petition, the court denied it on July 20, 2016. Pet. App. 19a.

REASONS FOR DENYING THE PETITION

Nothing about the short, unanimous opinion below warrants this Court's review. In the 26 years since Section 1367(d) was enacted, only a handful of courts have weighed in on the question presented, and very few of them were state courts of last resort. The question thus recurs too infrequently to warrant this Court's review. At minimum, further percolation is advisable given that consensus may emerge as more courts eventually address the question, and given that the Court would benefit from robust views on the issue in the event it ultimately wishes to take it up.

The question presented also does not implicate an important federal interest. Under the grace-period approach, a disappointed federal litigant has at least 30 days to re-file her state-law claims in local court. This serves Congress's goal of preventing the loss of state-law claims to statutes of limitations after a federal court declines to exercise supplemental jurisdiction

over them. Section 1367(d) on its face makes clear that Congress intended only to guarantee a minimum re-filing period to allow the supplemental-jurisdiction process to function smoothly, not to keep states from taking different approaches on the length of time to re-file.

In any event, the opinion below is correct on the merits. Petitioner failed to re-file her state-law claims in local court within Section 1367(d)'s 30-day grace period and, accordingly, the court properly found them barred. Congress allowed states to extend the period for re-filing beyond that grace period, but did not require them to do so.

I. The Question Is Not Sufficiently Recurring To Warrant Review, Nor Is There An Entrenched Split.

Before Section 1367 was adopted in 1990, the ability of federal courts to exercise supplemental jurisdiction over pendent state-law claims, and the consequences of their declining to do so after resolving federal claims, engendered significant dispute. *See, e.g.*, *Jinks*, 538 U.S. at 462-63 (discussing the problems with the "pre-§ 1367(d) world" and citing cases). As part of a long-awaited and landmark supplemental-jurisdiction statute, Section 1367(d) provided a "straightforward tolling rule in place of [the former] regime." *Id.* at 463. In the quarter-century since its enactment, only a few state high courts and one federal appellate court have passed on the question presented here, which shows that it is not the kind of frequently recurring issue warranting this Court's attention.

To be sure, there is a nascent disagreement on the tolling effect of Section 1367(d), with two state high courts taking the view that the statute of limitations on the state-law claims is suspended during the

pendency of the federal-court action and for 30 days thereafter. *Turner v. Kight*, 957 A.2d 984 (Md. 2008), *cert. denied*, 556 U.S. 1181 (2009); *Goodman v. Best Buy, Inc.*, 777 N.W.2d 755 (Minn. 2010). The United States Court of Appeals for the Sixth Circuit also applied the suspension approach to find supplemental state-law claims timely filed in a follow-on federal class action. *In re Vertrue Inc. Mktg. & Sales Practices Litig.*, 719 F.3d 474, 480-81 (6th Cir. 2013).

Meanwhile, the Supreme Court of California, the Supreme Court of the Northern Mariana Islands, and the court below have held that Section 1367(d) provides a 30-day grace period for the filing of otherwise time-barred state-law claims after the federal court declines to exercise supplemental jurisdiction over them. *City of L.A. v. Cty. of Kern*, 328 P.3d 56 (Cal. 2014); *Juan v. Commonwealth*, 6 N. Mar. I. 322 (2001)[1]; Pet. App. 1a-11a. But this disagreement among a scant number of courts—out of the nearly 70 state high courts and federal courts of appeals that could pass on the issue—demonstrates that this question does not recur frequently.

To try to show an "entrenched" conflict, petitioner cites a smattering of decisions from state intermediate appellate courts. Pet. 13. They are not decisions of state courts of last resort, *see* Sup. Ct. R. 10, and many intermediate appellate court decisions are not even binding statewide. For example, petitioner cites a case in which the Ohio Court of Appeals, Sixth District, followed the grace-period approach. Pet. 13 (citing

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[1] The Northern Mariana Islands, like the District of Columbia, is considered a "state" for purposes of Section 1367. *See* 28 U.S.C. § 1367(e) ("As used in this section, the term 'State' includes the District of Columbia . . . and any territory or possession of the United States.").

Smith v. Erie Cty. Sheriff's Dep't, 59 N.E.3d 725 (Ohio Ct. App. 2016)). She contends that "[i]t is unlikely [the] question would reach the Ohio Supreme Court, given that future plaintiffs in Ohio state court would likely acquiesce to *Smith* and file suit within 30 days of a federal dismissal." Pet. 14 n.4. That speculation is unfounded. If the decision of one appellate district were so influential, one would have expected the plaintiff in *Smith* to have acquiesced and filed her claim within 30 days because, ten years earlier, the Ohio Court of Appeals, Eighth District, had adopted the grace-period approach. *See Harris v. O'Brien*, Nos. 86218, 86323, 2006 WL 73452, at *2-3 (Ohio Ct. App. Jan. 12, 2006). The decisions of one Ohio district's appellate court are not binding on another, and thus the question remains an open one in most of the state. Accordingly, it stands to reason that the issue will continue to percolate over time through the Ohio Courts of Appeals and to its Supreme Court.[2]

Indeed, this type of percolation is precisely what happened in California, where, in *Kern*, the California Supreme Court resolved a conflict between its local courts on how to interpret Section 1367(d). *See* 328 P.3d at 59 (discussing earlier state cases). More states' high courts should have the opportunity to weigh in on

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[2] So too in North Carolina. There, the decision of one panel of its Court of Appeals is binding on future panels until overturned by a higher court. *State v. Jones*, 598 S.E.2d 125, 133-34 (N.C. 2004). The North Carolina Court of Appeals has considered the tolling question, but its Supreme Court has not yet taken it up. *See Harter v. Vernon*, 532 S.E.2d 836, 840 (N.C. Ct. App.), *disc. rev. denied*, 546 S.E.2d 97 (N.C. 2000), *and cert. denied*, 532 U.S. 1022 (2001); *see also Glynne v. Wilson Med. Ctr.*, 762 S.E.2d 645, 649-52 (N.C. Ct. App. 2014); *Huang v. Ziko*, 511 S.E.2d 305, 308 (N.C. Ct. App. 1999).

the limitations question, and perhaps reach consensus, before this Court considers review.

At minimum, further percolation is warranted because the analysis of the different approaches is not yet fully developed. The courts following the suspension approach have done so for different reasons—the Maryland Court of Appeals found Section 1367(d)'s language "[u]nquestionably . . . ambiguous," *Turner*, 957 A.2d at 989, whereas the Minnesota Supreme Court found it "unambiguous," *Goodman*, 777 N.W.2d at 761; *see also id.* ("[T]he tolling language of section 1367(d) has a plain meaning and is subject to only one reasonable interpretation."). These courts have not considered whether Section 1367(d) needs to be construed narrowly because it displaces an area that is traditionally the subject of state regulation. *Cf. Kern*, 328 P.3d at 64-65 (discussing presumption against preemption); Pet. App. 9a-10a (same). And no high court to adopt the suspension approach has grappled with the legislative history later discussed in *Kern* or the opinion below. *Cf. Turner*, 957 A.2d at 992 (finding "nothing in the legislative history").

If petitioner is correct that the question is recurring, other state courts of last resort and federal appellate courts will have the opportunity to grapple with it and consensus may emerge. Even if it does not, the question will be more developed when it comes back to this Court.

II. The Question Is Not Important Enough To Warrant Review And Does Not Implicate Any Significant Federal Interest.

This Court reserves review for questions of considerable federal importance. *See* Sup. Ct. R. 10. The question presented here is not sufficiently important because, regardless of the approach any particular jurisdiction employs, a disappointed federal litigant has at least 30 days after the federal court declines to exercise supplemental jurisdiction to file her local-court suit. Thus, no diligent plaintiff will be deprived of her ability to proceed on her state-law claims.

Filing the state-law claims in local court after the federal court declines to exercise supplemental jurisdiction is not an onerous task. The complaint asserting the state-law claims has already been drafted and filed in federal court. The plaintiff need only change the caption, omit the federal claims, and file it in the local court. Thirty days provides more than ample time to do so. Were this not so, more state high courts would have addressed the question since the passage of Section 1367(d) in 1990, especially given the frequency with which federal courts decline to exercise supplemental jurisdiction. *See, e.g.*, *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 351 (1988) ("When the single federal-law claim in the action was eliminated at an early stage of the litigation, the District Court had a powerful reason to choose not to continue to exercise jurisdiction."); *Enochs v. Lampasas Cty.*, 641 F.3d 155, 161 (5th Cir. 2011) ("'Our general rule is to dismiss state claims when the federal claims to which they are pendent are dismissed.'" (quoting *Parker & Parsley Petroleum Co. v. Dresser Indus.*, 972 F.2d 580, 585 (5th Cir. 1992))).

Petitioner argues that a plaintiff needs more than 30 days because she must decide whether to appeal the federal dismissal.[3] Pet. 19. She also asserts that a plaintiff might need "to find a new lawyer admitted to appear in state court and to adjust her litigation strategy or assess the evidence in light of the opinion issued by the federal court." Pet. 19. But 30 days is sufficient for all of this. Moreover, the question is not whether a plaintiff must be prepared to proceed to trial within that 30-day period, but whether she can file a complaint—a short, plain statement of why she is entitled to relief, which should be virtually identical to what she filed in federal court.

Petitioner also contends that the difference of opinion between the Maryland Court of Appeals and the court below will lead to forum shopping. Pet. 15. These claims, by their very nature, arise under state law, and thus it would be curious for a plaintiff like Artis to bring her supplemental District-law claims in a Maryland court in the hope that it would apply the suspension approach in assessing whether the District's statute of limitations had run, especially when she could file a timely suit in the District's Superior Court within 30 days of the federal dismissal.

Moreover, even if forum shopping were an issue, it is one that Section 1367(d) expressly contemplates. The statute sets the time for filing in state court at 30 days "unless State law provides for a longer tolling period." 28 U.S.C. § 1367(d). Tennessee, for example,

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[3] A federal appeal would further extend the time for filing any claims in local court. *See, e.g.*, *Turner*, 957 A.2d at 996-97 (explaining that Section 1367(d)'s tolling extends to "issuance of an order of the U.S. Court of Appeals dismissing the appeal or a mandate affirming the dismissal of those claims by the District Court").

affords litigants one year from the date of federal-court dismissal to file a new action in local court. Tenn. Code Ann. § 28-1-115. In the event a disappointed federal-court litigant has the option of choosing among several fora, she can consider the timing of their tolling provisions in the way she assesses any other aspect of litigation strategy.

Even if the question presented could be considered important, the text of Section 1367(d) shows that the interest here is a state-by-state interest, rather than a federal one. *Cf. Am. Pipe & Constr. Co. v. Utah*, 414 U.S. 538, 545 (1974) ("grant[ing] certiorari to consider a seemingly important question affecting the administration of justice in the federal courts"). Congress manifestly had no intent to ensure uniformity between the states. Instead, Section 1367(d) merely serves as a default rule "to prevent the loss of claims to statutes of limitations where state law might fail to toll the running of the period of limitations while a supplemental claim was pending in federal court." H.R. Rep. No. 101-734, at 30 (1990), *as reprinted in* 1990 U.S.C.C.A.N. 6860, 6876. Petitioner cites nothing suggesting that Congress surprisingly, and gratuitously, wished to intrude on state prerogatives as to state-law claims more than needed to promote the federal interest in the "fair and efficient operation of the federal courts." *Jinks*, 538 U.S. at 463.

Petitioner nonetheless argues that the question is important because it "goes to a basic issue of federal jurisdiction." Pet. 14. But these cases arise almost exclusively after a federal court has *declined* to exercise supplemental jurisdiction and the disappointed federal litigant resorts to local court. *See, e.g.*, *Kern*, 328 P.3d at 59; *Turner*, 957 A.2d at 985-86. Thus, unlike in *Jinks*, where South Carolina's invalidation

of Section 1367(d) interfered with federal litigation, 538 U.S. at 463, the decision below has no effect on how federal courts adjudicate federal or supplemental state-law claims. In this context, it is the state interest in applying state law in state courts that predominates, not any vestigial federal interest.

III. The Decision Below Is Correct.

Finally, review is not warranted because the lower court was correct on the merits. Petitioners argue that "tolled" always means "suspended." Pet. 4, 16, 19. But, as this Court has recognized, the effect of a tolling provision can vary widely. *See, e.g.*, *Chardon v. Soto*, 462 U.S. 650, 660 n.13 (1983) ("Although some federal statutes provide for suspension, other statutes establish a variety of different tolling effects." (citation omitted)).

Indeed, when Congress intends to "suspend" a limitations period, it says so. Thus, Title 26 contains several provisions directing that "running of the period of limitations . . . shall . . . be suspended [pending another event] and for 60 days thereafter." 26 U.S.C. § 6503(a)(1); *see also, e.g.*, 26 U.S.C. §§ 6234(e)(2), 6255(f)(1)-(2). The same is true of Title 50. *See, e.g.*, 50 U.S.C. §§ 4000(c), 4308(c). That Congress chose a different word in Section 1367(d) indicates that it intended the tolling effect to be different.

Congress's intent to enact a grace-period approach is further confirmed by the statute's history. Section 1367(d) "implements in specific context a general recommendation of the American Law Institute [("ALI")] in its 1969 *Study of the Division of Jurisdiction Between State and Federal Courts*." Thomas M. Mengler, *et al.*, *Congress Accepts Supreme Court's Invitation to Codify Supplemental Jurisdiction*, 74 Judicature 213, 216 n.28 (1991). The ALI tolling

proposal provided for a grace period, not a suspension of the underlying limitations period. *Id.* at 216 & n.28; *see also Kern*, 328 P.3d at 63 (quoting ALI, *Study of the Division of Jurisdiction Between State and Federal Courts* § 1386(b), at 65 (1969)).

Finally, as the court below acknowledged, the grace-period approach "better accommodates federalism concerns." Pet. App. 9a; *see also Kern*, 328 P.3d at 64-65. When "'Congress intends to alter the usual constitutional balance between the States and the Federal Government, it must make its intention to do so unmistakably clear in the language of the statute.'" *Raygor v. Regents of Univ. of Minn.*, 534 U.S. 533, 543 (2002) (quoting *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 65 (1989)). "This principle applies when Congress 'intends to pre-empt the historic powers of the States' or when it legislates in 'traditionally sensitive areas' that 'affect[t] the federal balance.'" *Id.* (quoting *Will*, 491 U.S. at 65) (alteration in quotation). Just as this Court in *Raygor* construed Section 1367(d)'s tolling provision not to apply to dismissals of claims against non-consenting states on Eleventh Amendment grounds because the statute lacked a clear statement of intent to do so, the court below was correct to adopt the narrower grace-period approach because it "hazards significantly less impact on local statutes of limitation than the suspension approach." Pet. App. 9a (internal quotation marks omitted).[4]

That conclusion is reinforced by the statutory text allowing for "State law [to] provide[] for a longer

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[4] While Congress treats the District as a "state" for purposes of Section 1367, and many other purposes, the difference in the federalism analysis between the District and the states renders this a non-ideal vehicle for deciding the question presented.

tolling period." 28 U.S.C. § 1367(d). Congress thereby expressly allowed for state-by-state variation and showed that it intended to promote, not limit, each state's ability to make its own choices. Moreover, the fact that Congress contemplated that states might want "longer" periods, but not shorter ones, itself shows that the grace-period approach is the correct one. Had Congress meant to adopt the suspension approach, it would have wanted to give states flexibility to establish shorter periods as long as doing so would not compromise the federal interest in the administrability of the supplemental-jurisdiction process. After all, a state for obvious reasons might believe a litigant whose federal suit had been pending for years before supplemental jurisdiction was declined should not be allowed to wait the additional years potentially remaining on the state statute of limitations—and certainly would not need an inexplicable, *additional* 30 days to re-file. Instead, all Congress meant to do was ensure that litigants would have a chance to re-file state-law claims. In other words, Congress established a grace period.

CONCLUSION

The petition for a writ of certiorari should be denied.

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January 4, 2017

RECORD AND BRIEFS

No. 16-460

IN THE
Supreme Court of the United States

STEPHANIE C. ARTIS,
Petitioner,
v.
DISTRICT OF COLUMBIA,
Respondent.

On Petition for a Writ of Certiorari to the District of Columbia Court of Appeals

REPLY ON PETITION FOR CERTIORARI

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REPLY IN SUPPORT OF PETITION

In its brief in opposition, the District of Columbia ("District") concedes that the D.C. Court of Appeals took one side of a three-to-two split among federal appellate courts and state courts of last resort on the interpretation of the tolling provision in 28 U.S.C. § 1367(d). The Sixth Circuit, along with the high courts of Minnesota and Maryland, has adopted the "suspension approach" to Section 1367(d); they have interpreted "tolled" to mean "suspended." The California Supreme Court, along with the court below, has rejected that reading in favor of the "grace period" approach; they have interpreted Section 1367(d) to provide 30 days beyond a dismissal for the plaintiff to refile.

The District's arguments for denying certiorari in the face of this acknowledged split of authority are insubstantial. This Court should grant the petition.

I. Further Percolation Is Unnecessary

The District suggests that this Court should deny the petition because "only a handful of courts have weighed in on the question presented." BIO 5. On the contrary, the California Supreme Court recently explained that there is "a deep and long-standing national divide over section 1367(d)'s true meaning. More than one dozen courts, in California and across the country, have weighed in; the statute has divided them virtually in half." *City of L.A. v. Cty. of Kern*, 328 P.3d 56, 61 (Cal. 2014); *see Turner v. Kight*, 957 A.2d 984, 989 (Md. 2008) (noting that the lower "courts have split on what the proper interpretation [of Section

1367(d)] should be" and that "learned appellate judges around the country cannot agree on the meaning and application" of the statute). The District acknowledges that there is already a three-to-two split on the question presented among federal appellate courts and state courts of last resort. *Compare In re Vertrue Inc. Mkg. & Sales Practices Litig.*, 719 F.3d 474, 480-81 (6th Cir. 2013) ("suspension" approach); *Goodman v. Best Buy, Inc.*, 777 N.W.2d 755, 759-60 (Minn. 2010) (same); and *Turner*, 957 A.2d at 990 (same), *with Kern*, 328 P.3d at 65 ("grace period" approach); and Pet. App. 1a-11a (decision below) (same). This three-to-two split is more than sufficient to justify a grant of certiorari. The Court regularly grants certiorari in cases presenting one-to-one and two-to-one splits.[1] It should grant certiorari on the three-to-two split here.

Moreover, this issue arises frequently in intermediate state appellate courts. *See, e.g.*, *Williams v. Mann*, No. 34,180, 2016 WL 6081847, at *3 (N.M. Ct. App. Oct. 17, 2016) (adopting suspension approach); *Dahl v. Eckerd Family Youth Alts., Inc.*, 843 So. 2d 956, 958 (Fla. Dist. Ct. App. 2003) (adopting the grace period approach); *Gottschalk v. Woods*, 766 S.E.2d 130, 136-38 (Ga. Ct. App. 2014) (same); *Berke v. Buckley*

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[1] *See, e.g.*, *Ocasio v. United States*, 136 S. Ct. 1423 (2016) (one-to-one split); *Nichols v. United States*, 136 S. Ct. 1113 (2016) (one-to-one split); *Luis v. United States*, 136 S. Ct. 1083 (2016) (one-to-one split); *Menominee Indian Tribe of Wis. v. United States*, 136 S. Ct. 750 (2016) (one-to-one split); *Molina-Martinez v. United States*, 136 S. Ct. 1338 (2016) (two-to-one split); *Taylor v. United States*, 136 S. Ct. 2074 (2016) (two-to-one split); *Husky Int'l Elecs., Inc. v. Ritz*, 136 S. Ct. 1581 (2016) (two-to-one split).

Broad. Corp., 821 A.2d 118, 123-24 (N.J. Super. Ct. App. Div. 2003) (same); *Smith v. Erie Cty. Sheriff's Dep't*, 59 N.E.3d 725, 729-30 (Ohio Ct. App. 2016) (same). The District points out that these decisions are not binding statewide, BIO 7-8, but that is not the point; the point is that the sheer volume of decisions on this issue shows that it recurs frequently.[2]

Nor would further percolation yield any substantial benefit. The arguments on both sides of the split have been fully aired in reasoned decisions. The lower courts' opinions have laid out the competing interpretations of the statute and have extensively analyzed the merits of each approach. *See, e.g.*, *Turner*, 957 A.2d at 990 (noting that three "alternative interpretations [of Section 1367(d)] have been presented to the courts" and discussing each of these approaches); *Goodman*, 777 N.W.2d at 759 (same). The District emphasizes that, in adopting the "suspension" approach, the Maryland Court of Appeals deemed the statute ambiguous while the Minnesota Supreme Court characterized it as unambiguous. BIO 9. But any disagreement between these courts over the level of

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[2] Moreover, as Petitioner has explained, even the intermediate appellate court decisions have created practical problems. For example, the Sixth Circuit has adopted the "suspension" approach while an intermediate Ohio court has adopted the "grace period" approach. Pet. 15-16. Thus, the statute of limitations on state-law claims in Ohio varies depending on whether the claim is in federal or state court, which is an outcome this Court has long sought to avoid. The District has nothing to say regarding this state/federal split. Nor does the District dispute the possibility of forum-shopping between states, beyond the assertion that such forum-shopping would be "curious." BIO 11.

ambiguity in the statute enhances Petitioner's argument that there is a conflict of authority. The lower courts' divergent readings of the statute are a reason to grant the petition, not deny it.

Given that there is already a three-to-two split on this question, additional percolation will neither make the issue go away nor provide additional illumination. Only this Court can resolve the conflict.

II. The Question Presented Is Important

The District next argues that the question presented is insignificant, apparently on the ground that a plaintiff can avoid any time bar simply by filing her lawsuit more quickly. BIO 10-11. However, the same can be said in any case involving a statute of limitations dispute—the plaintiff can always avoid a time bar by filing more quickly. Yet this Court regularly hears statute of limitations cases because statutes of limitations are important and represent Congress's "weighing of competing claims of fairness—the need of plaintiffs for a reasonable amount of time within which to present their claims, and the right of defendants to be free from stale claims." *Castro v. Collecto, Inc.*, 634 F.3d 779, 784 (5th Cir. 2011) (quoting *United States v. Land*, 213 F.3d 830, 837 (5th Cir. 2000)).[3] If Congress in fact provided additional time to

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[3] *See, e.g., Green v. Brennan*, 136 S. Ct. 1769 (2016) (analyzing statute of limitations for contacting an Equal Employment Opportunity counselor); *McQuiggin v. Perkins*, 133 S. Ct. 1924 (2013) (discussing the interplay between AEDPA's statute of limitations for filing a federal habeas petition and actual innocence claims); *Gabelli v. SEC*, 133 S. Ct. 1216 (2013) (analyzing statute of limitations for the SEC to seek civil penalties); *United States v.*

refile a lawsuit, then litigants should have that additional time. It is no answer to say that Congress's intent is irrelevant because litigants will still have *some* time to refile under the District's position. The District also insists that the question presented is unimportant because filing a state-court complaint is ostensibly not "onerous." BIO 10. But even if this were true, it would be irrelevant; the Court frequently grants review in cases addressing the timeliness of less-than-onerous filings.[4] Whether it imposes onerous obligations or not, the interpretation of a federal limitations period should be clarified and not vary from jurisdiction to jurisdiction.

The District also argues that the petition should be denied because "[a]ny federal interest in standardizing a particular approach is minimal." BIO 3. This is a puzzling argument, because the question presented concerns the interpretation of a federal statute, and a comprehensively framed one at that. 28 U.S.C. § 1367(d) (providing the tolling rule for "any" dismissed state law claim). As this Court explained in *Jinks v. Richland County*, Congress enacted Section 1367(d) to "provid[e] a straightforward tolling rule" which "promotes fair and efficient operation of the federal courts and is therefore conducive to the administration

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Home Concrete & Supply, LLC, 132 S. Ct. 1836 (2012) (analyzing statute of limitations for the IRS to assess a deficiency against a taxpayer).

[4] *See, e.g., United States ex rel. Eisenstein v. City of New York*, 556 U.S. 928 (2009) (timeliness of notice of appeal); *Bowles v. Russell*, 551 U.S. 205 (2007) (same).

of justice." 538 U.S. 456, 463 (2003). This Court should not undermine Congress's decision to provide a uniform tolling rule by allowing different interpretations of federal law to govern in different jurisdictions. *Cf. Davis v. Virginian Ry. Co.*, 361 U.S. 354, 355 (1960) (noting that certiorari was granted because "the question posed was of importance in the uniform administration of [a] federal statute").

In the end, even the District must concede that "federal courts decline to exercise supplemental jurisdiction" with "frequency." BIO 10. In every one of those "frequen[t]" cases, the limitations period for the refiled state claims will turn on this Court's answer to the question presented. This Court should grant the petition to ensure that an orderly and uniform tolling rule applies throughout the nation.

III. The Decision Below Is Wrong

Petitioner's argument is simple: The word "tolled" means "suspended." *See Black's Law Dictionary* 1716 (10th ed. 2014) (defining a "tolling statute" as "[a] law that interrupts"—*i.e.*, suspends—"the running of a statute of limitations in certain situations"); *see also Chardon v. Fumero Soto*, 462 U.S. 650, 652 n.1 (1983) (construing "the word 'tolling' to mean that, during the relevant period, the statute of limitations ceases to run"). As this Court has previously observed in dicta, the effect of Section 1367(d) is to "toll the state statute of limitations for 30 days *in addition to however long the claim had been pending in federal court.*" *Raygor v. Regents of the Univ. of Minn.*, 534 U.S. 533, 542 (2002) (emphasis added).

The District provides little meaningful response. It unearths a few statutes related to taxation and military defense that use the word "suspended" rather than "tolled," BIO 13, but that does not justify giving the term "tolled" something other than its ordinary meaning. Indeed, the District cannot point to a single instance in which the word "tolled" has the meaning it would give it here.

Like the court below, the District also relies on a law review article that purports to show that the legislative history supports its position. BIO 13-14; Pet. App. 8a-9a. But legislative history and law review articles cannot change the meaning of clear statutory text, which is a point that this Court has emphasized in the particular context of the supplemental jurisdiction statute and the very House Report upon which the District relies. *See Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568-70 (2005) (explaining that the "authoritative statement is the statutory text, not the legislative history or any other extrinsic material" and disclaiming reliance on Section 1367's "murky" legislative history).

Indeed, although the District's law review article claims that the legislative history shows that Congress intended to adopt an ALI recommendation in line with its position, the House Report contains no such statement. To the contrary, it states only that the purpose of Section 1367(d) is "to prevent the loss of claims to statutes of limitations where state law might fail to toll the running of the period of limitations while a supplemental claim was pending in federal court." H.R. Rep. No. 101-734, at 30 (1990), *as reprinted in*

1990 U.S.C.C.A.N. 6860, 6876. That statement is supportive of Petitioner's position, and in any case it is not remotely sufficient to overcome the provision's plain text.

Finally, the District points to federalism concerns. BIO 14-15. But this Court has already rejected a federalism challenge to this precise statute. *See Jinks*, 538 U.S. at 462-65. Any federalism interest in making the federal tolling period slightly longer or shorter does not justify deviating from the statute's plain text.

IV. There Are No Vehicle Problems

This case is an excellent vehicle for resolving the conflict among the lower courts because the outcome in the court below turned entirely on the proper interpretation of Section 1367(d). *See* Pet App. 4a ("It is necessary, in order to answer the question presented in this case, to resolve the meaning of 'tolled' in 28 U.S.C. § 1367(d)."). Petitioner filed her federal suit with two years remaining on her limitations clock, and she filed her state suit fifty-nine days after dismissal of the federal suit. Pet App. 3a-4a. The District does not dispute that Petitioner's suit is timely under the "suspension" approach but untimely under the "grace period" approach.

In a footnote, the District characterizes this case as a "non-ideal vehicle" because the District is not a State. BIO 14 n.4. But, as the District acknowledges, the District is explicitly defined as a State under Section 1367. BIO 7 n.1, 14 n.4. The District correctly does not suggest that the interpretation of this statute depends on whether a case arises in the District or in a State.

Given that the statute treats States and the District identically, there is no vehicle problem in this case.

CONCLUSION

The petition for a writ of certiorari should be granted.

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RECORD AND BRIEFS

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Supreme Court of the United States

STEPHANIE C. ARTIS
Petitioner,

v.

DISTRICT OF COLUMBIA,
Respondent.

On Writ of Certiorari to the
District of Columbia Court of Appeals

BRIEF OF PETITIONER

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QUESTION PRESENTED

Section 1367 of Title 28 authorizes federal district courts in certain circumstances to exercise supplemental jurisdiction over claims arising under State law.

Section 1367 further provides that "[t]he period of limitations for any [such] claim ... shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period." 28 U.S.C. § 1367(d).

The question presented is whether the tolling provision in § 1367(d) suspends the limitations period for the state-law claim while the federal suit is pending and for thirty days after the claim is dismissed, or whether the tolling provision does not suspend the limitations period but merely provides 30 days beyond the dismissal for the plaintiff to refile.

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OPINIONS BELOW

The opinion of the District of Columbia Court of Appeals is reported at 135 A.3d 334, and is reprinted in the Appendix to the Petition ("Pet App.") at 1a. The opinion of the Superior Court for the District of Columbia is unreported and is reprinted at Pet. App. 12a.

JURISDICTION

The District of Columbia Court of Appeals issued its opinion on April 7, 2016. Petitioner's timely petition for panel and *en banc* rehearing was denied on July 20, 2016. The jurisdiction of this Court is properly invoked pursuant to 28 U.S.C. § 1257.

STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 1367(a)

Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

28 U.S.C. § 1367(c)

The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if—

(1) the claim raises a novel or complex issue of State law,

(2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,

(3) the district court has dismissed all claims over which it has original jurisdiction, or

(4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

28 U.S.C. § 1367(d)

The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.

STATEMENT OF THE CASE

Section 1367 of Title 28 authorizes federal courts to exercise "supplemental jurisdiction" over certain state-law claims when they are paired with a related claim within the court's original jurisdiction. Section 1367's grant of authority is permissive, however, rather than mandatory. A federal court may "decline" to hear the state-law claim under specified circumstances, such as where the issue of state law is complex or where the court has dismissed the underlying federal claims. This permissive structure gives rise to the question that is the subject of this appeal: how long does a plaintiff have to refile her state-law claims in state court once a federal court has declined to exercise supplemental jurisdiction over them?

Congress could hardly have provided a clearer answer. In § 1367(d), Congress specified that the "period of limitations" for a supplemental jurisdiction claim "shall be tolled while the claim is pending and for 30 days after it is dismissed unless State law provides for a longer period." In other words, the statute of limitations for the supplemental state-law claim does not run while the claim is pending in federal court and for 30 days after dismissal. A plaintiff who brings suit in federal court with, say, 90 days remaining on the limitations period for her state-law claim will have 90 days to refile her claim in state court, beginning 30 days after the federal dismissal.

The court below disagreed and instead adopted what it called the "grace period" interpretation of § 1367(d). It held that the statute of limitations *continues* to run while the claim is pending in federal court, and that

§ 1367 merely allows 30 days to refile in the event that the statute of limitations expires during the pendency of the state-law claim. That interpretation is plainly incorrect. Treating the statute of limitations as continuing to run while the claim is pending is not "tolling" but its opposite.

The court below paid little attention to the text of § 1367. Instead it rested its decision almost exclusively on legislative history (which it misread) and supposed federalism concerns (without citing this Court's unanimous opinion holding that § 1367(d) does not impinge upon state sovereignty). The reality is that there is nothing novel about the tolling structure of § 1367(d). The U.S. Code is replete with examples of Congress tolling the statute of limitations for a claim while a litigant seeks review in another judicial or administrative forum. Congress adopted the same regime here to encourage litigants to bring all their claims—state and federal—arising out of the same controversy in a single action. This Court should uphold Congress's clear tolling rule and reverse the decision below.

A. Statutory Background

Supplemental jurisdiction is the concept that "once a court has original jurisdiction over some claims in the action, it may exercise ... jurisdiction over additional claims that are part of the same case or controversy." *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 552 (2005).

For many years, supplemental jurisdiction was defined by a body of judge-made law in which the leading

case was *United Mine Workers of America v. Gibbs*, 383 U.S. 715 (1966). In *Gibbs*, this Court held that federal courts could exercise jurisdiction over "state and federal claims ... derive[d] from a common nucleus of operative fact." *Id.* at 725. That exercise of jurisdiction was one "of discretion, not of plaintiff's right." *Id.* at 726. District courts could decline to hear state-law claims by dismissing them without prejudice, allowing the plaintiff to refile in a state forum. *See id.*

This Court subsequently issued a series of decisions in which it reaffirmed the rule of *Gibbs* but declined at times to construe the scope of supplemental jurisdiction more "broadly" in the absence of any express statutory authorization for the doctrine. *See Exxon*, 545 U.S. at 553-57 (recounting history). In the last decision in that line of cases, this Court observed that "[w]hatever we say regarding the scope of jurisdiction conferred by a particular statute can of course be changed by Congress." *Finley v. United States*, 490 U.S. 545, 556 (1989).

One year later, in 1990, "Congress accepted the invitation" by passing the Judicial Improvements Act, which codified the doctrine of supplemental jurisdiction at 28 U.S.C. § 1367. *Exxon*, 545 U.S. at 557. In the House Report accompanying the Act, Congress explained that it wished to remove "doubt" about the power of federal courts to hear supplemental jurisdiction claims, and that it believed that "[s]upplemental jurisdiction has enabled federal courts and litigants to ... deal economically—in single rather than multiple litigation—with related matters." H.R. Rep. No. 101-

734, at 28 (1990), *as reprinted in* 1990 U.S.C.C.A.N. 6860, 6874 ("House Report").

Three subsections of § 1367 are relevant here. Subsection (a) authorizes supplemental jurisdiction over "all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy." 28 U.S.C. § 1367(a).

In subsection (c), Congress provided that a district court nonetheless "may decline to exercise supplemental jurisdiction over a claim under subsection (a)" if it determines that the state-law claim substantially predominates or raises novel or complex issues; if the district court has dismissed all federal claims; or in other exceptional circumstances. 28 U.S.C. § 1367(c).

Finally, in subsection (d), Congress provided that if the district court dismisses a claim over which there is supplemental jurisdiction, "[t]he period of limitations for any claim asserted under subsection (a) [*i.e.*, a supplemental jurisdiction claim] ... shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period." 28 U.S.C. § 1367(d).[1] As the House Report explains, the purpose of the tolling rule is "to prevent the loss of claims to statutes of limitations where state law might fail to toll the running of the period of limitations while a supplemental claim was pending in federal

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[1] The "District of Columbia" is a "State" for purposes of § 1367. *See* § 1367(e).

court." House Report at 30, *as reprinted in* 1990 U.S.C.C.A.N. at 6876.

Since 1990, this Court has twice had occasion to construe § 1367(d). In *Raygor v. Regents of University of Minnesota*, 534 U.S. 533 (2002), this Court considered the scope of supplemental jurisdiction in the context of state-law suits against States. *Raygor* held that Congress had not intended § 1367 to abrogate state sovereign immunity by authorizing supplemental jurisdiction over state-law claims against unconsenting States. *Id.* at 541. And because such claims "do not fall within the proper scope" of the supplemental jurisdiction statute, the Court further held that § 1367(d)'s tolling provision did not apply to them. *Id.* at 545. *Had* § 1367(d) applied to such claims, the Court explained that it would have "toll[ed] the state statute of limitations for 30 days in addition to however long the claim had been pending in federal court." *Id.* at 542.

Then, in 2003, the Court squarely rejected the argument that § 1367(d) unconstitutionally "violates principles of state sovereignty" by tolling the state statute of limitations for supplemental jurisdiction claims. *Jinks v. Richland Cty.*, 538 U.S. 456, 464 (2003). The Court held that Congress "unquestionably" had the constitutional authority to adopt § 1367(d)'s "straightforward tolling rule" because it "promotes fair and efficient operation of the federal courts and is therefore conducive to the administration of justice." *Id.*

B. Factual and Procedural Background.

Petitioner Stephanie Artis was hired by the District of Columbia as a health inspector in August 2007. Pet.

App. 2a. While in that position, Artis alleges that she became aware of misconduct by her superiors. Court of Appeals Joint Appendix ("D.C. App.") at 3. Among other misconduct, she alleged that her supervisor falsified reports containing her monthly statistics. *Id.* She further alleged that supervisor had verbally abused her using threatening language. *Id.*

Based on this conduct, Artis filed a complaint with the D.C. Office of Inspector General in February 2009, and a discrimination claim with the U.S. Equal Employment Opportunity Commission ("EEOC") in April 2009. Artis submitted other grievances in March and April 2010. *Id.* at 4. These grievances were based on, among other things, her supervisor's refusal to allow her to attend training classes that Artis's male colleagues were allowed to attend, her supervisor's refusal to conduct her evaluations in person, and her supervisor's improper dismissal of notices of infraction that Artis had issued in carrying out her duties as a health inspector. *Id.* at 3-5.

On November 15, 2010, Artis learned that the Department of Health declined to renew her contract. *Id.* at 5-6. She was given no explanation for the decision other than a statement from the District that "there is no cause for us releasing her, we are just not keeping her." *Id.* at 6. Artis subsequently filed a final grievance in January 2011, alleging the termination was retaliation for her actions against her supervisor. *Id.*

On December 16, 2011, Artis sued the District of Columbia in the United States District Court for the District of Columbia, alleging she was terminated in violation of Title VII, 42 U.S.C. § 2000e-5. She also

asserted claims under the District of Columbia Whistleblower Act, D.C. Code § 1-615.54, the District of Columbia False Claims Act, D.C. Code § 2-381.04, and for wrongful termination against public policy. *See Artis v. District of Columbia*, 51 F. Supp. 3d 135, 137 (D.D.C. 2014).

On June 27, 2014, the district court granted summary judgment to the District of Columbia on the Title VII claim, which was premised solely on Artis's claims that her supervisor had prohibited her from attending certain training classes and had refused to conduct her evaluations in person. *Id.* at 140. The court found that although "the factual record, construed in the light most favorable to Artis, seems to support both of these allegations," they did not "rise[] to the level of an 'adverse action' under the law of this Circuit" even if they were true. *Id.*

Having dismissed the only federal claim Artis brought, the district court declined to exercise supplemental jurisdiction over the remaining state claims pursuant to 28 U.S.C. § 1367(c)(3). *Id.* at 141. The district court expressly stated that it was not passing on the merits of Artis's claims under District law, but that it was merely declining to consider them given that it had dismissed the only federal claim in her complaint. *Id.* at 137. In so ruling, the district court explained that "Artis will not be prejudiced because 28 U.S.C. § 1367(d) provides for a tolling of the statute of limitations during the period the case was here and for at least 30 days thereafter." *Id.* at 142.

On August 25, 2014—fifty-nine days after that dismissal—Artis re-filed in D.C. Superior Court. Pet.

App. 3a. On January 29, 2015, the Superior Court granted the District of Columbia's motion to dismiss, finding Artis's claims time-barred.[2] Pet. App. 17a-18a. The court acknowledged that other courts had interpreted § 1367(d) to mean that the limitations period for a supplemental state law claim would not continue to run while that claim was pending in federal court and for 30 days thereafter. Pet. App. 15a n.2. But it found that interpretation unpersuasive primarily because Artis

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[2] The Superior Court did not explain its calculations, but the D.C. False Claims Act and the tort of wrongful termination each have a three-year statute of limitations that started to run on the date Artis was terminated, November 10, 2010. *See* D.C. Code § 2-381.04(a) (D.C. False Claims Act); *Stephenson v. American Dental Ass'n*, 789 A.2d 1248, 1252 (D.C. 2002) (tort of wrongful termination governed by D.C.'s catch-all three-year limitations period and begins to run on the date when plaintiff has unequivocal notice of termination (citing D.C. Code § 12-301(8))). When Artis filed her suit in federal court on December 16, 2011, she had approximately 13 months remaining on the three-year limitations period for these claims. The federal court dismissed her suit on June 27, 2014, more than three years after these claims accrued. Artis refiled in Superior Court 59 days after the federal dismissal, and the court found those claims time-barred.

Artis's whistleblower claim had a one-year limitations period, which began to accrue when Artis "first bec[a]me[] aware" that she was terminated because she reported her supervisor's misconduct. D.C. Code § 1-615.54(a)(2). The complaint does not allege precisely when Artis first became aware that the District terminated her because of her actions against her supervisor; she pled only that the union submitted a grievance charging that her termination was retaliatory in January of 2011. Pet. App. 2a-3a; Court of Appeals Joint Appendix (D.C. J.A. 1) at 6. Accordingly, Artis's whistleblower claim accrued in January 2011, and thus also was time-barred under the Superior Court's interpretation of § 1367(d).

was not "barred" from filing a "duplicative" state court suit while her federal suit was pending. Pet. App. 14a-15a.

Artis appealed and on April 7, 2016, the D.C. Court of Appeals affirmed the dismissal on limitations grounds. Pet. App. 2a, 11a. The appellate court began by acknowledging the split in authority as to whether § 1367(d) "suspended" the statute of limitations while the state law claim was pending in federal court and for 30 days thereafter, or whether § 1367(d) provided a "grace period" in which the limitations period would continue to run while the claim was pending, but that the plaintiff would have "a thirty-day 'grace period' allowing claims that would otherwise have become barred to be pursued in state court if refiled no later than 30 days after federal court dismissal." Pet. App. 6a-7a (citations and internal quotation marks omitted).

In choosing between these interpretations, the appellate court spent little time with the text of § 1367(d), which it found ambiguous. Pet. App. 2a, 5a-6a. Instead, the court relied primarily on a decision from the California Supreme Court that contended that Congress had intended to implement a 1969 recommendation from the American Law Institute to allow re-filing in state court only "within 30 days after dismissal." Pet. App. 9a. The Court also concluded that the grace period approach "better accommodates federalism concerns" by reducing the time period § 1367(d) allows for refiling in federal court. *Id.*

Artis filed a timely petition for rehearing that was denied. Pet. App. 19a. Artis then timely filed a petition

for certiorari to this Court, which was granted on February 27, 2017.

SUMMARY OF ARGUMENT

I. Section 1367(d)'s tolling rule could hardly be clearer: "The period of limitations for any claim asserted under subsection (a) [i.e., a supplemental jurisdiction claim] ... *shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.*" 28 U.S.C. §1367(d) (emphasis added).

A. To "toll" a statute of limitations is to suspend it. That is what "tolled" means in the dictionary, and that is what this Court has repeatedly held. Section 1367(d) accordingly tolls, or suspends, the limitations period for a supplemental jurisdiction claim while it is "pending" in federal court and for "30 days after it is dismissed." A litigant who comes to federal court with one year left on the limitations period for her state-law claim will have one year remaining on that claim in the event it is dismissed, and that year begins running 30 days after the date of dismissal. Indeed, this Court gave § 1367(d) just that construction in a prior opinion discussing its scope: "[Section § 1367(d)] toll[s] the state statute of limitations for 30 days in addition to however long the claim had been pending in federal court." *Raygor*, 534 U.S. at 542.

Section 1367(d)'s command to toll the limitations period "while the claim is pending" works just like numerous others in the U.S. Code. For example, 28 U.S.C. § 1332 authorizes plaintiffs to bring "mass tort" claims in federal court and mandates that the limitations

period "shall be deemed tolled during the period that the action is pending in Federal court." Provisions like these would be nonsensical if the "tolled" limitations period continued to run while the claim was pending in the first forum. Their very point is to protect litigants from losing claims while they are being advanced in a preferred forum. So too with § 1367(d). In order to encourage litigants to bring all their factually related claims—state and federal—in a single action, Congress ensured that a litigant would be no worse off limitations-wise for having invoked supplemental jurisdiction in the event her supplemental claim is dismissed.

B. The "grace period" interpretation the court below adopted is flatly foreclosed by the text of § 1367(d). Under that interpretation, the statute of limitations for the supplemental claim *continues* to run while it is pending in federal court, but the litigant receives 30 days to refile her claim in state court in the event that the limitations period expires while the claim is pending.

That is not "tolling." If Congress had wanted the statute of limitations to continue to run, subject to a grace period in the event it expired, it would have said so. The U.S. Code contains several such grace period provisions and none of them use the word "toll." For example, the provision that sets the statute of limitations for money damages claims by the United States says that "[i]n the event that any action ... is timely brought and is thereafter dismissed without prejudice, the action may be recommenced within one year after such dismissal, *regardless of whether the action would otherwise then be barred* by this section." 28 U.S.C. § 2415(e) (emphasis added).

II. The court below rested its interpretation not on statutory text, but on legislative history and purported federalism concerns. Even leaving aside § 1367(d)'s utter lack of ambiguity, both arguments are misplaced.

A. At the outset, it makes perfect sense that Congress would choose to toll the limitations periods on supplemental claims while they were pending in federal court and for 30 days after dismissal. Tolling encourages litigants to bring all their related claims, both state and federal, in a single action, much like other tolling provisions in the U.S. Code encourage litigants to bring claims in a preferred forum first. And tolling under § 1367(d) does not prejudice the defendant because, by definition, the plaintiff will have timely filed her claims at the outset and thereby given notice to the defendant of those claims.

While § 1367 ensures that every litigant who timely files a supplemental claim has at least 30 days to refile, Congress had good reason to provide additional time to litigants who promptly filed their supplemental claims in federal court. As this case demonstrates, it can easily take years for a supplemental claim to be dismissed, at which point a litigant will routinely face numerous strategic decisions. She will have to decide whether to appeal the federal dismissal. She will have to decide whether she wishes to obtain new counsel, or, if her federal counsel declines to represent her further, she may be forced to find new counsel. And, she will have to decide whether she should add, change, or eliminate the state-law claims she presents to the state court. Providing a diligent litigant with the balance of her

limitations period appropriately gives her more time to make these decisions.

As for legislative history, what little there is supports Petitioner. The House Report accompanying § 1367(d) states that the provision was intended to "prevent the loss of claims to statutes of limitations where state law might fail to toll the running of the period of limitations *while a supplemental claim was pending in federal court.*" House Report at 30, *as reprinted in* 1990 U.S.C.C.A.N. at 6876 (emphasis added). Only Petitioner's interpretation tolls the limitations period "while a supplemental claim was pending in federal court."

B. The court below concluded that Congress intended to adopt a 1969 recommendation from the American Law Institute that would have provided a 30-day grace period, but that argument fails on multiple levels. Most importantly, Congress did not enact the grace period language of the ALI report; it provided that the limitations period "shall be tolled while the claim [is] pending." Moreover, although the House Report acknowledges that it was adopting the ALI's recommendations concerning other provisions, it never mentions the report in connection with § 1367(d). House Report at 23, *as reprinted in* 1990 U.S.C.A.A.N. at 6869. That shows that Congress was aware of the ALI's recommendations and chose not to adopt them regarding tolling.

At bottom, it turns out that the only would-be connection between the ALI recommendation and § 1367(d) is a law review article by three professors who assisted in the drafting of § 1367, and who claimed that

it was modelled—despite its contrary text—on the ALI's recommendation. Relying on a law review article in lieu of statutory text—and indeed even in lieu of legislative history—would be engaging in precisely the kind of "murky" atextual analysis this Court has rejected in other cases interpreting the scope of § 1367(d). *Exxon*, 545 U.S. at 568.

As for federalism, this Court has not only upheld provisions tolling state law limitations periods going back at least to the Civil War, it has specifically held that § 1367(d) does not impinge upon state sovereignty. As this Court explained in *Jinks*, the Constitution gives Congress the power to oversee the administration of the lower federal courts, and Congress unquestionably was entitled to use that authority to adopt a tolling provision to encourage litigants to bring all of their factually related claims in a single related action. *Jinks*, 538 U.S. at 463-64. Congress was constitutionally empowered to adopt a tolling rule for supplemental jurisdiction claims, and this Court should enforce the rule Congress so plainly adopted.

ARGUMENT

I. Section 1367's Plain Text Establishes That Petitioner's Suit Is Timely.

A. Section 1367(d) Suspends The Statute Of Limitations For Supplemental Claims While They Are Pending In Federal Court And For 30 Days After Dismissal.

Statutory construction begins "with the language of the statute itself." *Caraco Pharm. Labs., Ltd. v. Novo Nordisk A/S*, 566 U.S. 399, 412 (2012) (internal quotation marks omitted). "In this case it is also where the inquiry should end" because §1367(d) is crystal clear. *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241 (1989).

Section 1367(d) provides that the "period of limitations" for a supplemental jurisdiction claim "shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period." 28 U.S.C. §1367(d).

To "toll" a statute of limitations for a given period is to "suspend it," as both legal and general dictionaries attest. *See, e.g., Black's Law Dictionary* 1488 (6th ed. 1990) (defining "toll" as "[t]o suspend or stop temporarily as the statute of limitations is tolled during the defendant's absence from the jurisdiction and during the plaintiff's minority."); *Black's Law Dictionary* 1716 (10th ed. 2014) (defining "toll" as "of a time period, esp. a statutory one to stop the running of; to abate"); *The Random House Dictionary of the English Language* 1992 (2d ed. 1987) ("to suspend or interrupt (as a statute of limitations)). Thus, the plain meaning of §1367(d) is that the statute of limitations "shall be [suspended]

while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period."[3]

This Court has likewise repeatedly described tolling as meaning suspending. *CTS Corp. v. Waldburger*, 134 S. Ct. 2175, 2183 (2014) (characterizing equitable tolling as "a doctrine that 'pauses the running of, or "tolls," a statute of limitations'"); *Am. Pipe & Constr. Co. v. Utah*, 414 U.S. 538, 554 (1974) (characterizing tolling as "suspend[ing] the applicable statute of limitations"); *United States v. Ibarra*, 502 U.S. 1, 4 n.2 (1991) (per curiam) ("Principles of equitable tolling usually dictate that when a time bar has been suspended and then begins to run again upon a later event, the time remaining on the clock is calculated by subtracting from the full limitations period whatever time ran before the clock was stopped."); *Bendix Autolite Corp. v. Midwesco Enters., Inc.*, 486 U.S. 888, 889 (1988) ("Ohio recognizes a 4-year statute of limitations in actions for breach of

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[3] Some states have provisions that can provide for a longer time to refile than §1367(d) offers. For example, under Arizona law, "[i]f an action is commenced within the time limited for the action, and the action is terminated ... the plaintiff ... may commence a new action for the same cause after the expiration of the time so limited and within six months after such termination." Ariz. Rev. Stat. § 12–504(A). If a plaintiff filed an Arizona state law claim on the last day of the limitations period in federal court, this provision would provide six months rather than §1367(d)'s 30 days to refile. *See also, e.g.*, Ark. Code Ann. § 16-56-126 (providing one year to refile an action that was timely commenced and not dismissed on the merits); Okla. Stat. Ann. tit. 12, § 100 (same under Arkansas law); N.Y. C.P.L.R. § 205 (six months under New York law); Colo. Rev. Stat. § 13-80-111(1) (90 days under Colorado law).

contract or fraud. The statute is tolled, however, for any period that a person or corporation is not 'present' in the State. ... [W]e find the Ohio statute that suspends limitations protection for out-of-state entities is a violation of the Commerce Clause.").[4]

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[4] Other examples abound of this Court referring to the "tolling" of a limitations period as "suspending." *See, e.g., Kellogg Brown & Root Servs., Inc. v. United States, ex rel. Carter*, 135 S. Ct. 1970, 1976 (2015) (noting that "Congress changed the [Wartime Suspension of Limitations] Act's triggering event, providing that tolling is available not only when the United States is at war," in reference to prior iteration of Act instructing that certain statutes of limitations "shall be suspended" during wartime (internal quotation marks and alterations omitted)); *Wood v. Milyard*, 132 S. Ct. 1826, 1831-32 (2012) ("That motion, Wood asserts, remained pending (thus continuing to suspend the one-year clock) until at least August 2004, when he filed his second motion for postconviction relief in state court. The 2004 motion, the State does not contest, was 'properly filed.' Wood argues that this second motion further tolled the limitations period."); *Stogner v. California*, 539 U.S. 607, 652 (2003) ("It is a common policy for States to suspend statutes of limitations for civil harms against minors ... Some States toll the limitations periods for minors even where a guardian is appointed ... and even when the tolling conflicts with statutes of repose"); *Missouri v. Jenkins*, 495 U.S. 33, 45-46 (1990) ("[I]t has been the consistent practice of the Court to treat petitions for rehearing timely presented to the Courts of Appeals as tolling the start of the period in which a petition for certiorari must be sought until rehearing is denied or a new judgment is entered on the rehearing.... A timely petition for rehearing ... operates to suspend the finality of the ... court's judgment" (internal quotation marks and alterations omitted)); *Johnson v. Ry. Exp. Agency, Inc.*, 421 U.S. 454, 466 (1975) ("[T]here was a substantial body of relevant federal procedural law to guide the decision to toll the limitation period, and significant underlying federal policy that would have conflicted with a decision not to suspend the running of the statute"; *Leh v. Gen. Petroleum Corp.*, 382 U.S. 54, 63 (1965) ("The action upon which plaintiff relied

Indeed, this Court has construed § 1367(d) itself to suspend the limitations period just as Petitioner contends. In *Raygor*, this Court held that because § 1367(d)'s effect is to "toll the state statute of limitations for 30 days *in addition to however long the claim had been pending in federal court*" the Court would not construe the provision to apply to state-law claims seeking relief against States because it would raise constitutional concerns to extend the limitations period against unconsenting state sovereigns. 534 U.S. at 542 (emphasis added). While the parties in *Raygor* did not brief the precise mechanics of how § 1367(d) operates, the fact that this Court could easily perceive its meaning further confirms that § 1367(d) means what it says.

Further confirmation that "tolled" means "suspended" comes from the U.S. Code, which is replete with tolling provisions that would be nonsensical if tolled meant that the statute of limitations continued to run. These provisions typically toll the limitations period on a claim while a litigant is seeking review in some other judicial or administrative forum. To point to just a few examples:

- 28 U.S.C. § 1332 permits the removal of "mass actions" to federal court and provides that "[t]he limitations periods on any claims asserted in a

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as suspending the running of limitations was a Federal Trade Commission proceeding ... against Minnesota Mining but not against Essex. Essex was not a party to the interlocutory appeal in the private action and no contention was made here that the difference in parties prevented tolling of limitations as to Minnesota Mining.").

mass action that is removed to Federal court pursuant to this subsection *shall be deemed tolled* during the period that the action is pending in Federal court." 28 U.S.C. § 1332(d)(11)(D) (emphasis added).

- 21 U.S.C. § 1604 allows suits to proceed against certain biomaterial suppliers where the Secretary of Health and Human Services makes a certain finding and provides that "[a]ny applicable statute of limitations *shall toll during the period* from the time a claimant files a petition with the Secretary under this paragraph until such time as either (i) the Secretary issues a final decision on the petition, or (ii) the petition is withdrawn." 21 U.S.C. § 1604(b)(3)(C) (emphasis added).

- 42 U.S.C. § 233 provides a remedy against the United States for certain injuries caused by employees of the Public Health Service, and states that the "time limit for filing a claim under this subsection ... *shall be tolled* during the pendency of a[n] [administrative] request for benefits." 42 U.S.C. § 233(p)(3)(A)(ii) (emphasis added).

- 46 U.S.C. § 53911 provides, in a provision entitled "*Tolling of limitations period*" that if a plaintiff submits a claim for war-related vessel damage to the Secretary of Transportation, "the running of the limitations period for bringing a civil action is suspended until the Secretary denies the claim, and for 60 days thereafter." 46 U.S.C. § 53911(d) (emphasis added).

- 5 U.S.C. § 552(a) gives the government 20 days to respond to certain FOIA requests, but provides that the agency may "*toll the 20-day period* while it is awaiting" information it had requested from the FOIA requester. 5 U.S.C. § 552(a)(6)(A)(ii)(I) (emphasis added).[5]

In all of these provisions, tolling means that limitations period is suspended while some other event—another suit, an administrative review, an alternative request for relief, etc.—is taking place. If "tolled" did not mean "suspended," the provision would be meaningless because the limitations period would continue to run while the claim was pending elsewhere. The word "tolled" in § 1367(d) has just the same meaning: it suspends the limitations period on the supplemental claim "while the claim is pending and for a period of 30 days after it is dismissed" from federal court.

B. The Grace Period Interpretation Cannot Be Reconciled With § 1367(d)'s Text.

Against all this, there is no textual support for the "grace period" interpretation of § 1367(d) adopted by the

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[5] Other examples of statutory provisions using the word "toll" to mean "suspend" include 8 U.S.C. § 1182(a)(9)(B)(iv); 8 U.S.C. § 1186a(g); 8 U.S.C. § 1229b(b)(2)(A); 12 U.S.C. § 1831q(k)(1); 12 U.S.C. § 3419; 15 U.S.C. § 6603(h)(5); 15 U.S.C. § 6606; 15 U.S.C. § 6614(e)(3)(C); 18 U.S.C. § 2712(e); 18 U.S.C. app. 2 § 2, art. VI(a); 21 U.S.C. § 1604(b)(3)(C); 28 U.S.C. § 1332(d)(11)(D); 28 U.S.C. § 2263(b); 29 U.S.C. § 1854(f); 33 U.S.C. § 913(d); 33 U.S.C. § 930(f); 42 U.S.C. § 233(p)(3)(A)(ii); 42 U.S.C. § 247d-6e(d)(2); 42 U.S.C. § 4370m-2(c)(2)(G)(iii); 46 U.S.C. § 30508(d); 46 U.S.C. § 53911(d); 49 U.S.C. § 41714(i)(3); 50 U.S.C. § 3936(a).

court below. The phrase "tolled while the claim is pending and for a period of 30 days after it is dismissed" simply does not mean that the statute of limitation "continues to run while the claim is pending but provides for a period of 30 days after the claim is dismissed in the event the limitations period has since expired." That construction ignores the phrase "tolled while the claim is pending" instead of interpreting it.

Put another way, the grace period approach cannot be squared with the numerous statutes discussed above, *see supra* at 20-22, that call for tolling while a claim is pending in another forum. Those statutes do not specify any additional period of tolling, analogous to the additional 30 days of tolling in § 1367(d), that could possibly be construed as a "grace period." Thus, the lower court's interpretation implies that the addition of an extra 30 days of tolling *transforms* the meaning of the word "tolled" from "stops running" to "continues running." That cannot be right. "[S]tatutes" are not "chameleon[s]." *Clark v. Martinez*, 543 U.S. 371, 382 (2005). The word "tolled" means the same thing in § 1367(d) as it does in every other statute that "tolls" a limitations period "while the claim is pending": "suspended."

The grace period interpretation also makes a hash out of the statute's dual command that the limitations period for the supplemental claim "shall be tolled *while* the claim is pending *and* for a period of 30 days after it is dismissed." This language calls for two distinct periods of tolling: the period while the claim "is pending" and the period of "30 days after" the claim is dismissed. But under the grace period interpretation § 1367(d)

never affects the statute of limitations "while the claim is pending." The limitations period continues to run unabated during that time. And in cases where more than 30 days still remain on the limitations period after the claim is dismissed, § 1367(d) has no effect on the limitations period *at all*.

In the lower court's view, the only time § 1367(d) does any work is where the statute of limitations has expired while the federal claim is pending, or fewer than 30 days remain on the date the claim is dismissed, in which case the litigant receives 30 days to refile. But Congress did not want a provision that kicked in solely in that scenario; it called for tolling during both pendency of the claim and for the 30 days following, regardless of how much time remained on the limitations period. The grace period interpretation does not do that.

In arguing for the grace period approach, the lower court invoked this Court's decision in *Chardon v. Fumero Soto*, 462 U.S. 650, 660-61 (1983), as supporting the proposition that there could be various "tolling effects" other than suspension. Pet. App. 7a. But *Chardon* only confirms that the lower court is incorrect. In a footnote, *Chardon* noted that it was "possible to establish a fixed period such as six months or one year during which the plaintiff may file suit, without regard to the length of the original limitations period or the amount of time left when tolling began." 462 U.S. at 652 n.1. While Congress has crafted provisions that establish a fixed period for refiling regardless of the original statute of limitations, they look nothing like § 1367(d).

For example, in the six-year limitations provision governing suits for money damages by the United States for breach of contract, Congress provided that "[i]n the event that any action ... is timely brought and is thereafter dismissed without prejudice, the action may be recommenced within one year after such dismissal, *regardless of whether the action would otherwise then be barred by this section.*" 28 U.S.C. § 2415(e) (emphasis added).

Likewise, for certain suits under the Equal Credit Opportunity Act, Congress provided that "[n]o such action shall be brought later than 5 years after the date of the occurrence of the violation." 15 U.S.C. § 1691e(f). That five-year period is subject, however, to the "except[ion]," that where a government agency has brought a timely suit, an individual then may bring an action "*not later than one year* after the commencement of that proceeding or action." *Id.* (emphasis added).

Notably absent from these provisions is the word "toll." Instead of suspending the statute of limitations for the claims in question, these kinds of statutes give a litigant additional time to bring a suit in the event the limitations period has already expired. Congress is certainly entitled to adopt timing provisions of that kind, but it is equally certain that is not the kind of timing provision that Congress employed in § 1367(d).

***

In sum, the text of § 1367(d) is perfectly clear. The statute of limitations for a supplemental jurisdiction claim is tolled, *i.e.*, suspended, during the time when the

claim is pending in federal court and for 30 days after the claim is dismissed.

II. Interpreting "Tolled" To Mean "Suspended" Serves § 1367's Purposes.

The court below spent little time with § 1367(d)'s text, and instead rejected the suspension interpretation on the ground that it supposedly did not comport well with the "Act's legislative history and intent." Pet. App. 6a-7a, 9a. The lower court erred because § 1367(d)'s text resolves the question presented. *BedRoc Ltd., LLC v. United States*, 541 U.S. 176, 183 (2004) ("[O]ur inquiry begins with the statutory text, and ends there as well if the text is unambiguous."). But even if there were some ambiguity about what § 1367(d) means, construing "tolled" to mean "suspended" serves the purposes of the provision well. The court below disagreed only because it misconstrued the provision's legislative history and ignored this Court's prior rulings on § 1367(d).

A. Giving § 1367(d) Its Plain Meaning Carries Out Congress's Purpose.

The lower court concluded that—§ 1367(d)'s text aside—Congress would not have wanted to suspend the limitations period on a supplemental claim while it was pending in federal court. But § 1367(d) is no different from the many other tolling provisions in the U.S. Code. As explained above, *see supra* at 20-22, Congress frequently sets up tolling regimes that suspend the limitations period while a claim is pending in another judicial or administrative forum. Tolling the limitations period in this way encourages the litigant to bring her claim in that preferred forum first. It also helps ensure

that a plaintiff need not take the inefficient step of bringing actions in two forums at once. *Cf. Am. Pipe & Constr. Co.*, 414 U.S. at 554 ("We are convinced that the rule most consistent with federal class action procedure must be that the commencement of a class action suspends the applicable statute of limitations as to all asserted members of the class who would have been parties had the suit been permitted to continue as a class action.")

So too with § 1367. As this case illustrates, it can easily take a year or more to go from the filing of a complaint in federal court to an order dismissing the supplemental claims under § 1367(c). Even where a plaintiff diligently sues in court, her limitations period might very well run, absent tolling, by the time the federal court declines to exercise jurisdiction over the claim. By tolling the limitations period on the supplemental claim "while it is pending," § 1367(d) ensures that the plaintiff has a fair opportunity to bring the supplemental claim in state court.

Of course, the grace period approach also guarantees a plaintiff who is unsuccessful in federal court the opportunity to bring a claim in state court. But interpreting § 1367(d) according to its terms makes sense because it ensures that a litigant is no worse off for having brought her claim in the event that the court ultimately declines to consider it. Under the interpretation of the court below, a litigant who files a claim in federal district court diligently—with months or years left on the statute of limitations—may be treated the exact same way as a litigant who waits until one day before the statute of limitations expires before filing suit

in federal court. For both litigants, if the statute of limitations expires while the federal lawsuit is pending, they get 30 days to refile and no more.

It is easy to see why Congress thought that a diligent litigant should have more than that bare minimum. Refiling is often not merely a matter of replacing the case caption on a complaint. Following dismissal from federal court, a plaintiff might have to find new counsel, and to reassess litigation strategy or the evidence in light of the federal court's decision. At the same time, the plaintiff might also have to decide whether to appeal the dismissal of her federal claim. *See* Fed. R. App. P. 4(a)(1)(A) (requiring appeal to be filed within 30 days of final judgment). And while she is making these decisions, she must also consider whether it is cost-effective or financially feasible to proceed, particularly where a dismissed federal claim would have offered a greater recovery or attorneys' fees. At the same time, the key rationales for statutes of limitations—namely, "preventing surprises" to defendants and "barring a plaintiff who has slept on his rights," *American Pipe & Construction Co.*, 414 U.S. at 554 (internal quotation marks omitted)—are respected where a plaintiff has first timely filed in federal court.

What little legislative history there is concerning § 1367(d) shows that Congress intended not just to provide 30 days of grace but rather to suspend the limitations period while the supplemental claim was pending. In the House Report that accompanied § 1367, Congress specifically stated that it adopted § 1367(d) to "prevent the loss of claims to statutes of limitations where state law might fail to toll the running of the

period of limitations *while a supplemental claim was pending in federal court.*" House Report at 30, *as reprinted in* 1990 U.S.C.C.A.N. at 6876 (emphasis added). Tolling "the running of the period of limitations while a supplemental claim was pending in federal court" is precisely what the suspension interpretation does and the grace-period approach does *not* do.

B. The Court Below Misconstrued § 1367's Legislative History And Ignored This Court's Precedent.

The court below adopted the grace period interpretation based on its reading of the legislative history and purported federalism concerns. Both rationales are incorrect.

1. The court of appeals concluded that it "is apparent that in drafting subsection (d) of the Act, Congress incorporated recommendations from the academic community, specifically the American Law Institute (ALI)." Pet. App. 8a. In its 1969 Study of the Division of Jurisdiction Between State and Federal Courts ("Study"), the ALI did recommend providing a 30-day grace period for the refiling of certain claims, but Congress pointedly did not adopt that recommendation in § 1367, and, if anything, the legislative history shows that Congress was aware of that proposal and rejected it.

The ALI Study did not specifically discuss the doctrine of supplemental jurisdiction (perhaps because it was commissioned several years before this Court's decision in *Gibbs*). The Study, however, did call for a general provision specifying that "a new action on the

same claim brought in another court shall not be barred by a statute of limitations that would not have barred the original action had it been commenced in that court, if such new action is brought in a proper court, federal or State, within thirty days after dismissal of the original claim has become final or within such longer period as may be available under applicable State law." Study § 1386(b), at 65.

Had Congress adopted this or similar language for § 1367, it would have supported the lower court's interpretation. But Congress did not adopt that language. Instead of providing a grace period allowing refiling "within thirty days," Congress went further and expressly required tolling of the limitations period "while the claim is pending" in federal court. That "tolling while pending" language is absent from the ALI's proposed language.

Nor does it appear that Congress used language divergent from the ALI Study by accident. The House Report accompanying the Judicial Improvements Act mentions the Study, but it does so in the context of a wholly different provision, 28 U.S.C. § 1391, which governs venue in the federal courts. Regarding that provision, Congress specifically stated that its approach was "taken from the ALI study" House Report at 23, *as reprinted in* 1990 U.S.C.C.A.N. at 6869. No such language is to be found regarding § 1367, nor indeed any other provision of the Judicial Improvements Act.

In concluding that Congress meant to adopt the Study's recommendation for § 1367, the court below invoked a decision of the California Supreme Court that had reached that conclusion. Pet. App. 9a (citing *City of*

Los Angeles v. County of Kern, 328 P.3d 56, 63 (2014)). But *Kern's* reasoning was based not on the text of § 1367, nor even the House Report accompanying it, but rather a law review article written by three professors who had participated in drafting § 1367. That article asserts, without citation, that § 1367(d) "implements in specific context a general recommendation of the American Law Institute in its 1969 Study of the Division of Jurisdiction Between State and Federal Courts, § 1386(b)." Thomas M. Mengler et al., *Congress Accepts Supreme Court's Invitation to Codify Supplemental Jurisdiction*, 74 Judicature 213, 216 n.28 (1991).

The views of scholars—even those involved in the drafting of legislation—are no substitute for the "statutory text" that Congress actually enacted, and in this case do not even rise to the level of legislative history given that the House Report makes no mention of the ALI Study regarding § 1367(d). *Exxon*, 545 U.S. at 570. Indeed, in *Exxon*, this Court refused to credit the views of these same scholars because although their views were arguably consistent with the House Report in that case, they were at odds with what "§ 1367 on its face permits." *Id.* (internal quotation marks omitted). Here, the scholars' assertions are not even consistent with the House Report, let alone what "§ 1367 on its face permits." Accordingly, they should be rejected again.

2. The other ground relied upon by the court below was that giving "tolling" its plain meaning would not "accommodate[] federalism concerns" and be inconsistent with "our presumption favoring narrow interpretations of federal preemption of state law." Pet. App. 9a-10a.

Strikingly absent from the lower court's federalism discussion was any mention of this Court's decision in *Jinks*, which squarely rejected the argument that § 1367(d) "violates principles of state sovereignty." 538 U.S. at 464. As Justice Scalia explained for a unanimous Court, it has been settled at least since this Court's decision in *Stewart v. Kahn*, 78 U.S. (11 Wall.) 493 (1870), that Congress may, in appropriate circumstances, require state courts to apply a federal tolling rule in adjudicating state-law causes of action.[6] *Jinks*, 538 U.S. at 462.

Jinks held that it was wholly appropriate for Congress to provide a tolling rule for supplemental claims in exercising its constitutional authority "'[t]o constitute Tribunals inferior to the supreme Court,' U.S. Const., Art. I, § 8, cl. 9, and to assure that those tribunals may fairly and efficiently exercise '[t]he judicial Power of the United States,' Art. III, § 1." *Id.* at 462. Absent § 1367, *Jinks* explained, courts hearing supplemental state law claims would face a choice between the "obviously inefficient" options of retaining jurisdiction over a state-law claim "more appropriately ... heard in state court" or dismissing the state-law claim but allowing "the plaintiff to reopen the federal case if the

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[6] In *Stewart*, Congress had enacted a statute that provided that the applicable limitations periods in civil and criminal cases would be tolled for the period during which the actions could not be prosecuted because of the Civil War. *Stewart*, 78 U.S. at 494, 504-05. The claim in *Stewart* was a state-law breach of contract in Louisiana state court. This Court held that the statute applied to actions brought in state courts and then held that the tolling provision was within Congress's war powers under the Constitution. *See id.* at 506-07.

state court later held the claim to be time barred." *Id.* at 463. Justice Scalia concluded that "[b]y providing a straightforward tolling rule in place of this regime, § 1367(d) unquestionably promotes fair and efficient operation of the federal courts and is therefore conducive to the administration of justice." *Id.*

In light of these holdings, the lower court was simply incorrect to conclude that giving § 1367 its plain meaning would be an improper incursion into state sovereignty. For one thing, § 1367 is so "straightforward," *id.*, that it would overcome any "presumption against preemption." Reliance on the presumption is misguided as well because the grace-period approach *also* involves the displacement of state law; it extends the state limitations period by 30 days where it otherwise would have expired. Thus, adopting a "presumption against preemption" makes little sense: given that both parties agree that § 1367(d) "contemplated the pre-emption" of state statutes of limitations, the Court should not adopt the "starting presumption that Congress does not intend to supplant state law." *Gobeille v. Liberty Mut. Ins. Co.*, 136 S. Ct. 936, 946 (2016) (quotation mark omitted). And any federalism interest in making the federal tolling period somewhat longer or shorter does not justify deviating from the statute's plain text.

But the more fundamental point is that the statute does not disrupt the "usual constitutional balance between the States and the Federal Government." *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 65 (1989) (quoting *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 242 (1985)). Any presumption against preemption does not apply in areas "where there has been a history

of significant federal presence," and statutes tolling state limitations periods go back at least 150 years. *United States v. Locke*, 529 U.S. 89, 108 (2000). The Constitution charges Congress with the administration of the lower federal courts, and Congress is entitled to determine tolling rules and other matters of procedure in an effort to make those courts more efficient. While states are free to give litigants more time to bring claims, Congress is likewise free to make the determination that tolling will allow the lower federal courts to achieve a more "fair and efficient operation" by encouraging litigants to bring all their related state-law claims in a single federal action. *Jinks*, 538 U.S. at 463. Accordingly, Congress has ample constitutional authority to adopt a tolling rule for supplemental jurisdiction claims, and this Court should enforce rather than frustrate the rule that Congress chose.

CONCLUSION

The judgment below should be reversed and remanded.

Respectfully submitted,

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RECORD AND BRIEFS

No. 16-460

IN THE

Supreme Court of the United States

STEPHANIE C. ARTIS,
Petitioner,

v.

DISTRICT OF COLUMBIA,
Respondent.

On Writ of Certiorari to the District of Columbia Court of Appeals

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QUESTION PRESENTED

Whether 28 U.S.C. § 1367 tolls the period of limitations to provide a disappointed federal litigant with 30 days to refile her state-law claim in state court free of an otherwise applicable limitations bar, or whether it stops the clock on the state statute of limitations until federal dismissal, then adds 30 days, so that she may delay refiling in state court for months or even years.

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INTRODUCTION

Imagine that a plaintiff sues in federal court, claiming a violation of federal law and several state laws over which the court has supplemental jurisdiction. The action proceeds for several years and at judgment the supplemental claims are dismissed without prejudice, with the statutes of limitations having run during the pendency of the federal suit by operation of law. There is no dispute that if 28 U.S.C. § 1367(d) implements a 30-day period during which the dismissed claims can be refiled in state court free of the otherwise applicable limitations bar, the plaintiff is "guarantee[d]" the opportunity to file her dismissed claims in state court. Pet. Br. 27. The question presented is whether Section 1367(d) instead stops the state limitations clock from ticking and then adds 30 days to whatever time was left before the federal suit was filed, such that the plaintiff may have months or even years to refile her claims.

The answer must be determined based on the text, structure, purpose, and history of Section 1367. All of these interpretive aids point to the same answer. Section 1367(d) "toll[s]"—that is, "removes" or "takes away"—an otherwise applicable limitations bar during the pendency of the federal suit and for 30 days thereafter, unless state law provides for a longer period.

Petitioner advances a radically different conception of the statute's operation. But her "stop-clock" approach divorces "toll" from both its ordinary meaning and the statutory context in which it appears. That effort fails on its own terms. Nor does it make practical sense, where the sole virtue she identifies is that a "diligent" litigant would receive more time to refile than a dilatory one, and she offers no reason why she could not have filed her virtually identical

state-court complaint within the 30-day period provided by Section 1367(d).

A broader point also requires rejection of petitioner's approach. She asks this Court to interpret a modest federal statute tailored to promote the efficient resolution of claims in the federal courts to, as a rule, significantly—and gratuitously—extend state statutes of limitations and displace state-law tolling periods for claims litigated in state courts. That interpretation serves no federal purpose, stands on its head a statute that expressly gives way to state-law tolling provisions, and creates an unprecedented federal intrusion into an area within the historic power of the states. The Court should reject her interpretation, and so affirm.

STATEMENT OF THE CASE

A. Legal Background.

This case concerns the proper interpretation of 28 U.S.C. § 1367(d), a subsection of the supplemental jurisdiction statute. Section 1367 was enacted after Congress accepted this Court's invitation to clarify the circumstances in which a federal district court may exercise supplemental jurisdiction over claims outside of its original jurisdiction. *See* Judicial Improvements Act of 1990, Pub. L. No. 101-650, § 310a, 104 Stat. 5089, 5113; *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 557 (2005). In Section 1367(a), Congress provided a "broad jurisdictional grant," but, consistent with this Court's precedent, also specified in Section 1367(c) that the power to hear state-law claims need not be exercised in every case. *Exxon*, 545 U.S. at 559; *see* 28 U.S.C. § 1367(a), (c); H.R. Rep. No. 101-734, at 28-30 (1990), *reprinted in* 1990 U.S.C.C.A.N. 6860, 6874-76 ("House Report"); *United Mine Workers v. Gibbs*, 383 U.S. 715, 725-27 (1966).

Section 1367(d) facilitates the exercise of this discretion—and the use of federal court jurisdiction generally—by preventing the loss of claims to statutes of limitations where the federal court ultimately declines to exercise supplemental jurisdiction, and where state law does not, itself, provide for a tolling period. To wit:

> The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.

28 U.S.C. § 1367(d).

1. Before Section 1367(d) became law, federal litigants and federal courts had struggled with "the statute of limitations problems that abound[ed] in supplemental jurisdiction cases." *Federal Courts Study Committee Implementation Act and Civil Justice Reform Act: Hearing on H.R. 5381 and H.R. 3898 Before the Subcomm. on Courts, Intellectual Property, and the Administration of Justice of the House Comm. on the Judiciary*, 101st Cong., 695 (1990) ("*House Hearing*") (Wolf-Egnal explanation of the proposal to codify supplemental jurisdiction). Those problems arose because a claim dismissed without prejudice is treated for statute-of-limitations purposes as if it had never been filed. *See, e.g.*, 37 C.J., *Limitations of Actions*, § 527, at 1083 (1925); *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 351-53 (1988) (explaining that the statute of limitations on state-law claims may expire before the federal court "relinquish[es] jurisdiction," such that "a

dismissal will foreclose the plaintiff from litigating his claims"); *Elmore v. Henderson*, 227 F.3d 1009, 1011 (7th Cir. 2000) (Posner, J.) ("[W]hen a suit is dismissed without prejudice, the statute of limitations is deemed unaffected by the filing of the suit, so that if the statute of limitations has run the dismissal is effectively with prejudice.").

In light of this hornbook principle, litigants with related federal- and state-law claims faced a number of "unattractive options":

> (1) They could file a single federal-court action, which would run the risk that the federal court would dismiss the state-law claims after the limitations period had expired; (2) they could file a single state-law action, which would abandon their right to a federal forum; (3) they could file separate, timely actions in federal and state court and ask that the state-court litigation be stayed pending resolution of the federal case, which would increase litigation costs with no guarantee that the state court would oblige.

Jinks v. Richland Cty., S.C., 538 U.S. 456, 463 (2003).

Where litigants proceeded with the first option—filing one federal suit—federal courts faced a predicament regarding what to do with the state-law claims when the federal claims were dismissed. Some courts retained jurisdiction over the state-law claims to avoid a limitations bar (even when the claims would more appropriately be heard in state court), while others conditioned federal dismissal on the defendant waiving his limitations defense in state court or allowing the federal case to be reopened if the state claims were later deemed time-barred. *Id.* (citing cases); *see, e.g.*,

Newman v. Burgin, 930 F.2d 955, 963 (1st Cir. 1991) (Breyer, C.J.). In the removal context, this Court held that district courts had the power to remand the claims to state court, in part because a dismissal could trigger a state limitations bar, which would "foreclose the plaintiff from litigating his claims," "work injustice to the plaintiff," "conflict with the principle of comity," and "undermine[] the State's interest in enforcing its law." *Cohill*, 484 U.S. at 351-52.

2. The enactment of Section 1367(d) replaced these piecemeal and "inadequate" solutions with "the assurance that state-law claims asserted under § 1367(a) will not become time barred while pending in federal court." *Jinks*, 538 U.S. at 463, 464. If, at the federal dismissal, the state statute of limitations has run, the "period of limitations shall be tolled"—that is, the bar shall have no effect—"while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period." 28 U.S.C. § 1367(d). Congress thereby guaranteed the litigant a period of 30 days to refile in state court free of the bar of an otherwise applicable statute of limitations. *See, e.g.*, 16 *Moore's Federal Practice* § 106.66[3][c] (Lexis 2017) ("[Section 1367(d)] provides a brief window of protection that allows the plaintiff to file in state court without having to face a limitations defense.").[1]

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[1] Although this brief focuses on supplemental state-law claims, Section 1367(d) applies by its terms not only to a dismissal of the claim that depends on supplemental jurisdiction, but also to voluntary dismissal of other claims at the same time or afterwards, which could include federal claims. Section 1367(d) would apply uniformly to all of the dismissed claims and lift otherwise applicable limitations bars.

B. The Present Controversy.

In August 2007, the District of Columbia Department of Health ("DOH") appointed petitioner Stephanie Artis to a temporary term of employment as a Code Enforcement Inspector. Pet. App. 2a. Throughout her employment, Artis clashed with her supervisor, Gerard Brown, whom she believed had falsified reports and singled her out for unfair treatment. Pet. App. 2a. Artis accordingly filed numerous reports and grievances, including a complaint with the U.S. Equal Employment Opportunity Commission ("EEOC"), in which she challenged Brown's conduct and alleged gender discrimination. Pet. App. 2a; *see also* Pet. Br. 7-8.

In November 2010, shortly before Artis's term of employment was due to expire, DOH informed Artis that it would not be renewing her appointment. Pet. App. 2a. In January 2011, Artis amended her EEOC complaint to include a retaliation claim and filed an additional grievance alleging retaliation for reporting Brown's misconduct. Pet. App. 2a-3a.

On September 19, 2011, the EEOC issued Artis a right-to-sue letter, advising that she had 90 days to commence a civil action. D.C. Court of Appeals Joint Appendix ("D.C. App.") 2, Ex. 2 (attachment).

C. Proceedings Below.

1. On December 16, 2011, Artis filed suit against the District of Columbia in the U.S. District Court for the District of Columbia. D.C. App. 2, Ex. 2. Her complaint alleged gender discrimination in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, termination in violation of the D.C. False Claims Act, D.C. Code § 2-381.01, retaliation in violation of the D.C. Whistleblower Protection Act,

D.C. Code § 1-615.54, and wrongful discharge in violation of public policy. D.C. App. 2, Ex. 2.; *see also Artis v. District of Columbia*, 51 F. Supp. 3d 136, 137 & n.1 (D.D.C. 2014).

Following discovery, the District moved for summary judgment. The court granted the motion on Artis's Title VII claim on June 27, 2014, because "no reasonable jury could conclude that Artis was subjected to gender discrimination while employed by the District." *Id.* at 137; *see id.* at 140 ("There is no Title VII claim here.").

The court declined to exercise supplemental jurisdiction over Artis's remaining claims alleging retaliation and wrongful termination. *Id.* at 139, 141-42 (citing 28 U.S.C. § 1367(c)(3)). Noting its discretion, the court determined that judicial economy, convenience, fairness, and comity "weigh[ed] against retention of the case." *Id.* at 141. In deciding Artis's federal claim, the court explained, it had "developed no familiarity with the [state-law] issues presented." *Id.* at 142. And, because Section 1367(d) "provides for a tolling of the statute of limitations during the period the case was here and for at least 30 days thereafter," Artis could bring her state-law claims "in the appropriate local court" even if the statutes of limitations had run on them while the federal suit was pending. *Id.*

2. Fifty-nine days later, on August 25, 2014, Artis refiled her state-law claims in the Superior Court of the District of Columbia. D.C. App. 1. With the exception of statements pertaining to the court's identity and the dismissed federal claim, the addition of two brief factual allegations, and a reduction in requested damages (from $5 million to $10 million per claim to "no . . . less than" $250,000 per claim), the two complaints are identical. *Compare* D.C. App. 1 (Superior

Court complaint), *with* D.C. App. 2, Ex. 2 (federal court complaint).

The District moved to dismiss the complaint as time-barred, asserting that the respective statutes of limitations for Artis's claims had run while her federal suit was pending, and that she had failed to file her complaint within 30 days of the federal court's dismissal as required by Section 1367(d). Pet. App. 12a.

The Superior Court agreed. Pet. App. 12a-18a. It was "not persuaded" that Section 1367(d) permits a plaintiff to refile beyond the 30-day period. Pet. App. 14a. In other words, it rejected the notion that Section 1367(d) could be read (as Artis claimed) to stop the clock on the state statutes of limitations from the time the federal suit was filed until its dismissal—here, between December 16, 2011 and June 27, 2014—and then add 30 days, thereby permitting Artis to file suit about 2 years following the federal court's dismissal (or as late as July 2016). Moreover, the court reasoned, "a statute of limitation for a state law claim is a creature of the relevant state law," and "[Section] 1367(d) expressly makes this 30-day period inapplicable where state law would otherwise allow for further extension of the limitations period." Pet. App. 15a-17a.[2]

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[2] As petitioner acknowledges (at 10 n.2), the three-year statutes of limitations on her D.C. False Claims Act and wrongful termination claims commenced in November 2010. *See* D.C. Code §§ 2-381.04(a), 12-301(8). Thus, when the federal court dismissed her action on June 27, 2014, the statutes of limitations had run seven months earlier.

The District disputes Artis's assertion (at 10 n.2) that her claim under the D.C. Whistleblower Protection Act accrued in January 2011. *Cf.* D.C. Code § 1-615.54(a)(2) (requiring the claim to be brought "within one year after the employee first becomes

3. The District of Columbia Court of Appeals affirmed. Pet. App. 1a-11a. It, too, concluded that Section 1367(d) could not be read to provide Artis with the "nearly two years remaining on the statute of limitations . . . (plus thirty days) to file her claims in the Superior Court." Pet. App. 4a. Looking to what the statute intended to "toll[]," the court concluded that it permitted "claims that would otherwise have become barred to be pursued in state court if refiled no later than 30 days after federal court dismissal." Pet. App. 7a. That reading was consistent with the statute's purpose of "prevent[ing] the loss of claims to statutes of limitations," Pet. App. 8a (quoting House Report at 30), and "better accommodates [the] federalism concerns" that arise when federal law "invade[s] a historic state power by altering state statutes of limitations," Pet. App. 9a. The court thereafter denied Artis's petition for rehearing and rehearing en banc. Pet. App. 19a.

SUMMARY OF ARGUMENT

Because a claim dismissed without prejudice is treated for statute-of-limitations purposes as if it had never been filed, Section 1367(d) provides a straightforward tolling rule that prevents state-law claims

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aware of the violation"); *Payne v. District of Columbia*, 808 F. Supp. 2d 164, 171 (D.D.C. 2011) (accrual at notice of termination). In any event, even if Artis's whistleblower claim accrued then, her claim might still be untimely even under her view of Section 1367(d). For example, if it accrued on January 5, 2011, only 20 days would have remained in the one-year limitations period when Artis filed suit on December 16; added to the 30 extra days she alleges Section 1367(d) provides, Artis would have had to file suit within 50 days of the district court's dismissal—not the 59 days in which she did file.

from succumbing to an otherwise applicable limitations bar. It directs that the "period of limitations" for any claim asserted under supplemental jurisdiction "shall be tolled while the claim is pending and for a period of 30 days after it is dismissed, unless State law provides for a longer tolling period." Section 1367(d)'s text, context, purpose, and history make clear that the statute provides a disappointed federal litigant with 30 days to refile her claims in state court free of the otherwise applicable limitations bar—"unless State law provides for a longer tolling period."

1. "Toll" has an ordinary meaning, which is simply "to take away (as a right)" or "to remove the effect of." Read naturally, Section 1367(d) provides that a limitations bar in place by operation of law is "removed" or "taken away" for the described period.

That meaning is confirmed by other indicia of statutory interpretation. Most importantly, the broader context in which the word "toll[]" appears confirms that Section 1367(d) removes an otherwise applicable limitations bar while the federal suit is pending and for an additional 30 days. The statute's express enumeration of "a period of 30 days after [the claim] is dismissed," and its self-conscious deferral to "longer [state-law] tolling periods"—which most states have, generally ranging from six months to one year—reinforce the plain operation of Section 1367(d). That operation is also perfectly tailored to Section 1367(d)'s purpose. The provision appears within a federal jurisdictional statute designed to promote the fair and efficient operation of the federal courts. As petitioner acknowledges (at 27), a 30-day period "guarantees" her ability to refile her claims in state court, and state-law limitations and tolling periods otherwise operate as usual. Finally, the drafting history confirms that

Congress meant only to prevent the loss of state-law claims.

Petitioner's arguments to the contrary fail. Her analogy to equitable tolling—the operation of which is unsettled—cannot displace the proper interpretation of Section 1367(d), considered on its own terms. Nor can a hodgepodge of "tolling" statutes sprinkled throughout the U.S. Code justify her interpretation. What is more, while the supposed benefit of her reading is that "diligent" litigants get more time to refile, she fails to explain how that serves any federal purpose, let alone justifies the double-displacement of state law inherent in her view: the significant extension of state statutes of limitations and nullification of state-law tolling periods.

2. Even if Section 1367(d) were susceptible to petitioner's interpretation, it should be rejected. The adjudication of state-law claims in state court is undisputedly a matter at the heart of a state's sovereignty. Her displacement of state statutes of limitations and state-law tolling periods can thus be accepted only if it follows with absolute clarity from the text of the statute. But that is not even the better reading of Section 1367(d), let alone clearly so. Petitioner's suggestion that her intrusive approach poses no "federalism concerns" lacks merit.

Principles of constitutional avoidance counsel the same result. If Section 1367(d) works as petitioner proposes—gratuitously altering when state-law claims may be adjudicated in state courts—there is a serious question whether Congress could enact it under the Necessary and Proper Clause. The Court can, and should, avoid that provocative question.

ARGUMENT

I. Section 1367(d) Provides A Disappointed Federal Litigant With 30 Days To Refile Her Claims In State Court Unless State Law Provides For A Longer Tolling Period.

A. The ordinary meaning of the word "toll" is to remove or take away an effect; thus, "toll[ing]" the period of limitations lifts an otherwise applicable limitations bar.

"[T]he starting point for interpreting a statute is the language of the statute itself." *Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980). Because the statute nowhere defines the term "toll[]," it is interpreted in accordance with its ordinary meaning. *See Perrin v. United States*, 444 U.S. 37, 42 (1979); *Taniguchi v. Kan. Pac. Saipan, Ltd.*, 132 S. Ct. 1997, 2002 (2012). When the word is read in this way, the text of Section 1367(d) as a whole is quite clear. It removes the limitations bar "while the claim is pending and for 30 days after [the federal-court dismissal] unless State law provides for a longer tolling period."

1. At the time Congress enacted Section 1367, the primary definition of "toll" in *Black's Law Dictionary* was "[t]o bar, defeat, or take away." *Black's Law Dictionary* 1488 (6th ed. 1990) ("to toll the entry means to deny or take away the right of entry"); *accord id.* 1334 (5th ed. 1979) (same); *cf. FDIC v. Meyer*, 510 U.S. 471, 476 (1994) (construing undefined statutory term by reference to *Black's Law Dictionary*). Common dictionaries defined it in nearly identical terms—as "to take away the right of," or to otherwise "bar, defeat, [or] annul." 18 *Oxford English Dictionary* 204 (2d ed. 1989); *Webster's Third New Int'l Dictionary* 2405 (1976)

("to take away: make null: remove (~statute of limitations)") ("*Webster's Third*"). And it remains recognized today that toll means "to take away (as a right)" or "to remove the effect of." "Toll," Merriam-Webster.com, https://www.merriam-webster.com/dictionary toll (last visited Aug. 7, 2017); *see id.* ("[T]he court did not toll the statute of repose after the statutory period had expired . . . ."). As a matter of ordinary meaning, one can thus "toll" an event, an entitlement, or the consequences of an action.

The origin of the word "toll[]" explains why its primary meaning is the removal of a right or bar that might otherwise exist. The Latin derivation of the term means "to lift up, take away." *Webster's Third* 2405. And, at common law, "tolled" meant the same thing. *See* Abbott, 2 *Dictionary of Terms and Phrases Used in American or English Jurisprudence* 570 (1879) ("barred; taken away"); Byrne, *A Dictionary of English Law* 878 (photo. reprint 1991) (1923) ("As to 'toll' in the sense of taking away"); *id.* 300 (tolling within the doctrine of descent cast); *see also Ricard v. Williams*, 20 U.S. (7 Wheat.) 59, 120 (1822) (considering "whether the possession . . . can be considered as an adverse possession so as to toll the right of entry of the heirs, and, consequently, extinguish, by the lapse of time, their right of action for the land").

Tolling, of course, often refers to statutes of limitations. But there is nothing special about tolling limitations periods versus tolling any other fact, right, or consequence. "To 'toll' a statute of limitations means to show facts which remove its bar of the action." 54 C.J.S., *Limitations of Actions* § 85, at 120 (1987). *Black's* secondary definition of "toll" (Pet. Br. 17)—"[t]o suspend or stop temporarily as the statute of limitations is tolled during the defendant's absence from

the jurisdiction and during the plaintiff's minority"—simply rephrases the primary definition. To "suspend" a limitations period removes or takes away its effect, whether by stopping the running of the limitations period or by removing the bar that ordinarily would accompany its expiration.

That much is illustrated by the way this Court used the terms "toll" and "suspend" in *Hardin v. Straub*, 490 U.S. 536 (1989). In that case, the Court confronted a lower court's refusal to apply a state statute that "toll[ed] the limitations period" for prisoners and others suffering from legal disabilities. *Id.* at 537. Although the statute provided that such persons "shall have 1 year after the disability is removed . . . [to] bring the action *although the period of limitations has run*," *id.* at 540 (quoting Mich. Comp. Laws Ann. § 600.5851(1) (1987) (emphasis added)), the Court freely described the statute as "suspend[ing] limitations periods for persons under a legal disability until one year after the disability has been removed," *id.* at 537. That is because, as a matter of ordinary meaning, the period of limitations ordinarily applicable to the claim—in *Hardin*, a three-year period—*was* "suspended." It had been "take[n] away," "bar[red]," or "defeat[ed]." *See supra* pp. 12-13. That the period had also expired, according to the law's terms, was of no consequence. *Compare* Pet. Br. 20. Nor did it matter that the effect of "tolling" the limitations period was that the prisoner's claim could be brought within "1 year after the disability ha[d] been removed," as the limitations bar was "suspend[ed]" during that time. 490 U.S. at 537.

Similarly, in *Chardon v. Fumero Soto*, 462 U.S. 650 (1983), the Court underscored the ordinary meaning of "toll," explaining that even where there is agreement that the "statute of limitations was tolled," there still

can be "disagree[ment] as to *the effect* of the tolling": the period might be "suspended" such that plaintiff has "the amount of time left in the limitations period" to file her claim; the period might be "renewed [such that] plaintiff has the benefit of a new period as long as the original"; or there might be a "fixed period such as six months or one year during which the plaintiff may file suit without regard to the length of the original limitations period or the amount of time left when tolling began." *Id.* at 652 & n.1 (emphasis added); *see also id.* at 660 n.13 (citing federal statutes with "a variety of different tolling effects").

Applying those principles, the Court in *Chardon* held that its decision in *American Pipe & Construction Co. v. Utah*, 414 U.S. 538 (1974), applied only to the *fact* of tolling. To determine the tolling effect, the Court instructed, it was necessary to look to "state savings statute[s] . . . or, in the absence of a statute, . . . the most closely analogous state tolling statute." *Chardon*, 462 U.S. at 661. "*American Pipe*," the Court explained, simply "does not answer the question whether, in a [42 U.S.C.] § 1983 case in which the filing of a class action has tolled the statute of limitations until class certification is denied, the tolling effect is suspension rather than renewal or extension of the period." *Id.* Because in *Chardon* the Puerto Rican statute directed that the limitations period "begins to run anew when tolling ceases[,] the plaintiff benefits from the full length of the applicable limitations period." *Id.* at 655. In this way, the Puerto Rican law "fully protected" the federal interest being vindicated under Section 1983. *Id.* at 661.

As evidenced above, this Court routinely uses "toll[]" in its ordinary sense. Exceptions to state statutes of limitations, whatever their operation, "are generally

referred to as 'tolling.'" *Bd. of Regents of Univ. of State of N.Y. v. Tomanio*, 446 U.S. 478, 488 (1980); *Johnson v. Ry. Exp. Agency, Inc.*, 421 U.S. 454, 464 (1975). Equity "tolls the statute of limitations," *TRW Inc. v. Andrews*, 534 U.S. 19, 27 (2001), such that the period of limitations "does not begin to run" until the deceptive conduct is discovered, *Holmberg v. Armbrecht*, 327 U.S. 392, 397 (1946). And petitions for rehearing "toll[] the start of the period in which a petition for certiorari must be sought." *Missouri v. Jenkins*, 495 U.S. 33, 45 (1990); *cf. Stogner v. California*, 539 U.S. 607, 652 (2003) (Kennedy, J., dissenting) (discussing state statutes that toll limitations periods for minors by postponing their commencement). Tolling may also lift the bar of the statute of limitations for a specified period of time. *See, e.g.*, *Hardin*, 490 U.S. at 537, 544 (explaining that Michigan law is a "tolling statute" that "toll[s] the limitations period for prisoners" for a period of one year); *Tomanio*, 446 U.S. at 486-87 & n.6 (noting that New York law "codifies a number of the tolling rules developed at common law," including a provision that permits a plaintiff, in certain circumstances, to refile claims within six months of a timely prior action's termination, *see* N.Y. Civ. Prac. L. & R. § 205). Indeed, as discussed below, providing a designated period of time following dismissal is precisely how tolling statutes in this context have operated for centuries. *See infra* pp. 22-24.

2. Although not the ordinary meaning of the word standing alone, "toll" can, of course, be used to refer to numerous specialized operations, including stopping the clock on the limitations period such that it "begins to run again upon a later event." Pet. Br. 18 (quoting *United States v. Ibarra*, 502 U.S. 1, 4 n.2 (1991)); *see also* Pet. Br. 12 ("A litigant who comes to federal court with one year left on the limitations period for her

state-law claim will have one year remaining on that claim in the event it is dismissed, and that year begins running 30 days after the date of dismissal.").

In the cases on which petitioner relies (at 18-19 n.4), that operation is actually described in the statutory language being interpreted. For example, in *Wood v. Milyard*, 132 S. Ct. 1826 (2012), the Court was addressing 28 U.S.C. § 2244(d)(2), which does not use the word "toll" at all, but rather directs that "*[t]he time* during which a properly filed application for State post-conviction or other collateral review . . . is pending *shall not be counted* toward any period of limitation under" 28 U.S.C. § 2244(d)(1) (emphases added). *See also Bendix Autolite Corp. v. Midwesco Enters., Inc.*, 486 U.S. 888, 890 n.1 (1988) (Ohio statute directing that "the time . . . shall not be computed"). In *Kellogg Brown & Root Services, Inc. v. United States ex rel. Carter*, 135 S. Ct. 1970 (2015), the Court was similarly interpreting 18 U.S.C. § 3287, which provides only that "*the running of* any statute of limitations . . . *shall be suspended.*" *See id.* at 1976 (emphases added); *see also Leh v. Gen. Petroleum Corp.*, 382 U.S. 54, 55-56 & n.1 (1965) (same under 15 U.S.C. § 16(b) (1964 ed.)). Nothing in any of these cases suggests that the ordinary meaning of the word "toll" mandates any specific operation.[3]

Here, petitioner asks this Court (at, *e.g.*, 17-19, 22 & n.4) to read similar language into Section 1367(d)—namely that instead of "toll[ing]" the period of limitations, the statute (1) "suspends" (2) the "running

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[3] Nor has this Court "held" anything to the contrary. *See* Pet. Br. 20. The Court does not decide matters "not at issue" in the case before it, nor does it rule through dictum. *Kirtsaeng v. John Wiley & Sons, Inc.*, 568 U.S. 519, 548 (2013).

of" the period of limitations. But Congress used none of those words. And "[h]ad Congress intended th[at] [technical] construction," of toll, "it could have so indicated." *Smith v. United States*, 508 U.S. 223, 229 (1993). It did not, and "[w]ith a plain, nonabsurd meaning in view, [the Court] need not proceed in this way." *Lamie v. U.S. Trustee*, 540 U.S. 526, 538 (2004); *cf. Smith*, 508 U.S. at 230 ("It is one thing to say that the ordinary meaning of 'uses a firearm' *includes* using a firearm as a weapon . . . . But it is quite another to conclude that, as a result, the phrase also *excludes* any other use.").

3. With the ordinary meaning of "toll" in mind, Section 1367(d) is easily understood. When the federal court dismisses a supplemental claim, it is treated for statute-of-limitations purposes as if the claim had never been filed. This can result in a state-law claim being time-barred under state law. *See supra* pp. 3-4. Section 1367(d) accordingly provides that "the period of limitations"—here its effect as a time-bar—"shall be [removed or taken away] while the claim is pending [in federal court] and for a period of 30 days after it is dismissed." The ease with which these definitional terms—"removed" or "taken away"— can be read into the statute demonstrates that the word "toll" fits as hand in glove with the implementation of a 30-day period in which a dismissed supplemental claim may be refiled in state court free of an otherwise applicable limitations bar. In such a reading, the "tolling effect" is transparent: because at the time of dismissal the statute of limitations has expired (or "run"), tolling simply "removes" the limitations bar.

That reading is confirmed by the statute's proviso that it does not apply at all where state law provides

for "a longer *tolling* period." Like the ordinary meaning of the word "toll," the ordinary meaning of a "tolling period" is one in which the statute of limitations is deemed without effect—irrespective of *how* state law may provide for it. *See Chardon*, 462 U.S. at 652 & n.1. Thus, the "period of limitations . . . shall be [removed or taken away] . . . unless State law provides [that it is removed or taken away] for a longer . . . period." And because most states have tolling periods that remove the bar of the statute of limitations for time-certain periods "longer" than the 30 days provided under Section 1367(d), *see infra* pp. 22-23, the operation of Section 1367(d) harmonizes effortlessly with those state-law tolling periods.[4]

B. The statutory context and purpose confirm that Section 1367(d) lifts any limitations bar while the federal suit is pending and for 30 days thereafter.

It is sufficient that "toll" has an ordinary meaning that makes the operation of Section 1367(d) plain. But if the Court goes further, it should read the word "toll[]" within the specific context in which it is used and in light of its undisputed purpose. *See United States v. Menasche*, 348 U.S. 528, 538-39 (1955) ("It is our duty 'to give effect, if possible, to every clause and word of a statute.'"). Thus, even if "toll[]" could be

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[4] Indeed, if petitioner were correct that the word "toll" unambiguously requires stop-clock tolling (*e.g.*, Pet. Br. 3, 22), then only state-law stop-clock statutes would count for considering whether "State law provides for a longer *tolling* period," thereby excluding nearly all state-law tolling statutes from consideration. *See infra* pp. 22-23; *see also Powerex Corp. v. Reliant Energy Servs., Inc.*, 551 U.S. 224, 232 (2007) ("[I]dentical words and phrases within the same statute should normally be given the same meaning . . . .").

"understood in two or more possible senses or ways," *Chickasaw Nation v. United States*, 534 U.S. 84, 90 (2001), other indicia of congressional intent make clear that the provision operates to take away the bar of the period of limitations—not stop the clock on statutes of limitations or displace state-law tolling provisions.

1. *"30-Day" Provision*: Section 1367(d) "toll[s]" the "period of limitations . . . while the claim is pending and for a period of 30 days after it is dismissed." The express inclusion of the "period of 30 days after [the claim] is dismissed" is both conspicuous and essential to the statute's operation. Because a dismissed supplemental claim is treated for statute-of-limitations purposes as if it had never been filed, the limitations bar may prevent the claim from being refiled in state court. Section 1367(d) thus functions to lift the bar of the statute of limitations—to take away the otherwise applicable defense—if the claim is refiled in state court within "30 days after [the federal suit] is dismissed."

Petitioner asserts (at 23-24) that this understanding of Section 1367(d) "never affects the statute of limitations 'while the claim is pending,'" but that simply is not so. Section 1367(d) operates to remove any limitations bar that goes into effect during the enumerated period. This assures potential federal litigants that their supplemental claims will be protected throughout the federal litigation, and it ensures that a state court later faced with a statute-of-limitations defense will understand that the tolling of the limitations period covers the entire time the limitations bar would otherwise be in effect.

By contrast, if Section 1367(d) stopped the clock such that a disappointed litigant could file her claim months or years after it was dismissed by the federal

court, the inclusion of 30 days within the "tolling period" would be relegated to "insignifican[ce]," *Duncan v. Walker*, 533 U.S. 167, 175 (2001), in the mine-run of cases.

Petitioner's own case is illustrative. She alleges that Section 1367(d) allowed her to file suit 23 months *plus 30 days* following the federal court's dismissal. *See* Pet. App. 4a; Pet. Br. 10 n.2. But there is simply no reason—and petitioner offers none—why Congress would craft a tolling period that expressly provides for "a period of 30 days after [the claim] is dismissed" if the "toll[ing]" it specified *already* offered disappointed litigants the months or years that would ordinarily be left on the state-law period of limitations (no matter how many years had passed during the federal litigation). Unsurprisingly, petitioner cites no other federal statute that describes its operation only as "tolling" but then both stops the clock *and adds time to it*.

Indeed, the 30-day period would not matter in *any* case where the federal suit is dismissed with substantial time still remaining on the limitations period.[5] It would have meaningful effect only in the rare event

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[5] Similarly, petitioner nowhere explains why a federal tolling rule would extend—for months or years—state statutes of limitations that already provide ample time after federal dismissal for the litigant to file in state court. Consider a litigant who files a supplemental state-law claim subject to a three-year statute of limitations in federal court one month after her state-law claim accrues. The federal court dismisses the federal claim after one year and declines to exercise supplemental jurisdiction over the state-law claim. Under hornbook statute-of-limitations principles, the litigant has one year and 11 months to refile her state-law claim in state court. Under petitioner's view, the litigant has two years and 11 months, *plus 30 more days*, within which to file her state-court suit even though that extra time serves no federal interest.

that a plaintiff filed her federal case with essentially no time remaining in the original period of limitations. And if Congress had meant to address only that circumstance, the construction it chose does nothing to signal it.

"Longer Tolling Period": Section 1367(d) also expressly instructs that it does not apply whenever "State law provides for a longer tolling period." The upshot of that provision (which petitioner relegates to a footnote, *see* Pet. Br. 18 n.3) is the implementation of a federal *floor*, which state law displaces whenever the state-law tolling period is "longer": Section 1367(d) applies "*unless* State law provides for a *longer* tolling period."

This language refers to two easily proven facts within Congress's assumed knowledge. *See Miles v. Apex Marine Corp.*, 498 U.S. 19, 32 (1990) ("We assume that Congress is aware of existing law when it passes legislation."); *cf. United States v. Texas*, 507 U.S. 529, 534 (1993) ("[S]tatutes which invade the common law . . . are to be read with a presumption favoring the retention of long-established and familiar principles . . . ."). First, state law provides for "tolling periods" and, second, those periods are almost invariably "longer," such that they apply under Section 1367(d).

A clear majority of states—nearly 40—provide litigants with "tolling periods" during which they may refile their claims in the appropriate court. *See Johnson*, 421 U.S. at 463 & n.9; *Burnett v. N.Y. Cent. R.R. Co.*, 380 U.S. 424, 431-32 & n.9 (1965); *see generally* SLLC Am. Br. (statutory appendix).[6] And all

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[6] The *Burnett* Court discussed these statutes in the context of claims that had been dismissed for improper venue. *See* 380 U.S.

but a handful of those states toll the limitations period by "avoiding the bar of the limitations statute" and providing the disappointed litigant with a fixed period of time in which to refile in the proper court—"usually six months or one year after the dismissal." 2 Corman, *Limitation of Actions* § 13.6.1, at 312-13 (1991); *see also* 37 C.J., *Limitations of Actions*, § 537, at 1088 (1925) (tolling statute "prevent[s] the bar which would be applicable"); Ferguson, *The Statutes of Limitation Saving Statutes* 55 (1978) ("*Savings Statutes*") ("a new action may be commenced within a designated period following the dismissal"); *see, e.g.*, Ga. Code Ann. § 9-2-61 (six months); 736 Ill. Comp. Stat. § 5/13-217 (one year). Several states provide briefer periods of 60 or 90 days—but even those periods are still "longer" than the 30-day period provided by Section 1367(d). *See, e.g.*, Tex. Civ. Prac. & Rem. Code Ann. § 16.064 (60 days); Ky. Rev. Stat. Ann. § 413.270 (90 days); Colo. Rev. Stat. Ann. § 13-80-111 (90 days).[7]

Indeed, the states' uniform practice of lifting the bar of the applicable limitations period for a specified time following dismissal is far from coincidental. It dates to the early seventeenth century, when certain disappointed plaintiffs were permitted one year from the judgment in their initial action in which to commence a new action. Ferguson, *Savings Statutes*, at 14, 49-

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at 429-31 & n.9 (citing 31 state statutes). Nevertheless these, or similar statutes—as revised or recodified—apply to dismissals for a variety of reasons, including dismissals from federal court for lack of subject matter jurisdiction. *See* SLLC Am. Br. Part II.

[7] Only one state-law tolling statute of which respondent is aware stops the clock, and it does so by precisely describing its operation. *See* Va. Code Ann. § 8.01-229(E)(1) ("[T]he time such action is pending shall not be computed as part of the period within which such action may be brought . . . .").

59; *see also Gaines v. City of N.Y.*, 215 N.Y. 533, 537-38 (1915) (Cardozo, J.) (tracing lineage of the New York tolling statute to the English Limitation Act of 1623); *id.* at 538-42 ("the Statute of Limitations is not a bar" if the action is refiled "within one year"). That statutory tradition itself resembles a practice in the ancient common law, which provided that where an initial suit "abated for matter of form," the plaintiff would have a time certain within which to bring another suit, calculated according "the number of days which the parties must spend in journeying to" the new court. 37 C.J., *Limitations of Actions*, § 526, at 1082 (1925) (doctrine of journey's account).

Petitioner's reading fails to account for this history or honor Section 1367(d)'s express accommodation of state law. In this very case, for example, if District law had provided that petitioner could refile her claims within 90 days or six months or even one year of the termination of her federal action, *each* such law would be supplanted by operation of Section 1367(d). In none of those instances would the state-law "tolling period" be "longer" than the 23 months (plus 30 days) she would receive under her reading. Indeed, *all* of the generous state-law tolling statutes cited by petitioner (at 18 n.3)—and nearly every state-law tolling statute among the nearly 40 of which respondent is aware—would be supplanted if applied to petitioner's case.[8] It is difficult to see why Section 1367(d) would include an

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[8] Indiana's tolling period is three years. *See* Ind. Code § 34-11-8-1. Louisiana provides that after dismissal the limitations period "runs anew." La. Civ. Code Ann. §§ 3462, 3466; *see also* P.R. Laws Ann. tit. 31, § 5303 (similar). Notably, even in the single state that implements stop-clock tolling—*see supra* n.7, Section 1367(d) might still be "longer" due to the 30-day provision.

express clause *deferring* to such statutes if the operation of Section 1367(d) would ordinarily *supplant* them. *See Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 575 (1982) ("absurd results are to be avoided" where "alternative interpretations consistent with the legislative purpose are available").

Relatedly, if Congress meant to adopt stop-clock tolling—which, as here, could offer a disappointed litigant *years* to refile—it would be particularly incongruous to allow states to provide "longer" tolling periods, but *prevent* states from establishing *shorter* tolling periods, at least where doing so would not compromise the federal court's administration of supplemental claims. The language Congress chose thus confirms its intention to set a federal floor while respecting a state's sovereign interest in having its own statutes of limitations and tolling periods govern the adjudication of state-law claims.

2. Reading Section 1367(d) to permit a disappointed federal litigant 30 days to refile her claims in state court free of the bar of an otherwise applicable statute of limitations also completely satisfies the statute's purpose of preventing the loss of state-law claims.

Section 1367 is located within Title 28 of the United States Code, which is entitled "Judiciary and Judicial Procedure." Moreover, it is situated within Title 28's Chapter 85, which governs the jurisdiction of the federal district courts. Specifically, Section 1367 defines the scope of a federal district court's supplemental jurisdiction to the full extent permitted by the Constitution, reflecting Congress's determination that, as a general matter, federal and state claims should be tried together when they comprise one Article III "case." *See* 28 U.S.C. § 1367(a); *Exxon*, 545 U.S. at

559. That approach "deal[s] economically" with litigation that involves both federal- and state-law claims: it prevents plaintiffs from "(1) splitting the claims and bringing duplicative actions in state and federal courts; (2) abandoning one of the claims altogether; or (3) filing the entire case in state court, thus delegating the determination of federal issues to the state courts." *See* Judicial Conference of the United States, Report of Federal Courts Study Committee 47-48 (Apr. 2, 1990) ("FCSC Report").[9]

Nevertheless, tracking this Court's instruction in *Gibbs*, 383 U.S. at 726, Section 1367(c) provides that supplemental jurisdiction over state-law claims need not be exercised in every case. It "codifies the factors that [this Court] has recognized as providing legitimate bases upon which a district court may decline [to exercise supplemental] jurisdiction," in order to avoid undue intrusion on state-court prerogatives and to further the litigants' interest in obtaining resolution of their dispute by judges having the greatest familiarity with the governing state law. House Report at 29; *see* 28 U.S.C. § 1367(c); *Cohill*, 484 U.S. at 350. To ensure that the exercise of this discretion would not frustrate the broad grant of supplemental jurisdiction in Section 1367(a), however, a mechanism was needed to ensure that claims dismissed under Section 1367(c) would not be deemed barred by statutes of limitations when the litigant refiled them in state court.

Section 1367(d) accordingly provides "'a straightforward tolling rule' . . . [that] promotes fair and efficient

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[9] The Federal Courts Study Committee was convened by Congress with members appointed by the Chief Justice. FCSC Report at 3. Section 1367 "implement[s] [the] recommendation of the Federal Courts Study Committee." House Report at 27.

operation *of the federal courts*" and "eliminates a serious impediment to access . . . on the part of plaintiffs pursuing federal- and state-law claims that 'derive from a common nucleus of operative fact.'" *Jinks*, 538 U.S. at 463 (emphasis added). It "responds to the risk that the plaintiff's state-law claim, even though timely when filed as a part of the federal lawsuit, may be dismissed after the state period of limitations has expired." *Raygor v. Regents of Univ. of Minn.*, 534 U.S. 533, 550 (2002) (Stevens, J., dissenting).

As petitioner acknowledges, reading Section 1367(d) to allow refiling within 30 days after dismissal "guarantees a plaintiff who is unsuccessful in federal court the opportunity to bring [her] claim in state court." Pet. Br. 27.[10] Nothing more is required to address the timeliness concerns inherent in the discretion to decline supplemental jurisdiction.

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Thus, just as in *Exxon*, "[n]o other reading of Section 1367 is plausible in light of the text and structure of the jurisdictional statute." 545 U.S. at 566; *cf. Perry v. Merit Sys. Prot. Bd.*, 137 S. Ct. 1975, 1987 (2017) (adopting the interpretation that "best serves '[the statute's] objective'"). The "specific context in which [toll] is used, and the broader context of the statute as

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[10] A 30-day period also closely tracks the period of time that would follow a garden-variety remand of removed claims to state court. *Cf. Cohill*, 484 U.S. at 351-52 (encouraging remands where the "statute of limitations . . . has expired"); *City of Chi. v. Int'l Coll. of Surgeons*, 522 U.S. 156, 165-66 (1997) (Section 1367(d) "applies with equal force" to removed claims). That petitioner's interpretation of Section 1367(d) would treat a litigant whose claims were remanded radically differently from one whose claims were dismissed without prejudice counsels strongly against her interpretation.

a whole," offer no cause to depart from toll's ordinary meaning. *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997). The meaning of the statute is plain.

C. The drafting history supports the other indicia of Congress's intent.

In light of the above, there is little need to look to the drafting history of Section 1367(d). *Cf. Exxon*, 545 U.S. at 567. But that history accords with the other indicia of Congress's intent. Petitioner's claim to the contrary (at 29-31) lacks merit.

1. As initially proposed, Section 1367(d) provided that "[t]he period of limitations for any non-federal claim shall be tolled while the claim is pending in the district court and for a period of 30 days after it is dismissed under subsection (c) unless state law provides for a longer tolling period." *House Hearing* at 688. The drafters' note explains that the inclusion of this language was meant to "address[] . . . instances where . . . a state statute of limitations may bar the pleader from asserting [a dismissed] claim in a state court action." *Id.* at 695. By "provid[ing] a uniform federal tolling rule, with a residual state law reference if the state should have a more generous tolling provision," the pleader would have "adequate time to refile in the state court if the pleader so desires." *Id.*

Although minor alterations were made to that provision in the legislative process, it was enacted into law without substantial revision to, or discussion of, either the word "toll[]" or the enumerated "tolling period." *See generally* Wolf, *Codification of Supplemental Jurisdiction: Anatomy of a Legislative Proposal*, 14 W. New Eng. L. Rev. 1, 16-20 & apps. b-e (1992). The report of the House Judiciary Committee makes a brief mention of Section 1367(d), stating that it implements

"a period of tolling of statutes of limitations[,] . . . [t]he purpose [of which] is to prevent the loss of claims to statutes of limitations where state law might fail to toll the running of the period of limitations while a supplemental claim was pending in federal court." House Report at 30; *accord* 136 Cong. Rec. S17581 (daily ed. Oct. 27, 1990) (statement of Sen. Grassley).[11]

Although this history is spare, the statute's objective—to "prevent the loss of claims" where the statute of limitations would bar refiling—is clear. Moreover, it fully supports that Congress was using "toll[]" in its ordinary sense.

2. Petitioner wrongly claims (at 29) that the drafting history "reject[s]" that Section 1367(d) implements a 30-day tolling period. A closer look reveals that the opposite is true.

The nub of petitioner's argument is that the relevant portion of the House Report fails to mention similar language proposed in a 1969 study by the American Law Institute ("ALI"), which the court below cited as reason to interpret Section 1367(d) the way it did. *See* Pet. App. 8a-9a (citing *City of L.A. v. Cty. of Kern*, 328

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[11] Petitioner (at 28-29) seizes on the House Report's use of the word "running" as proof that Section 1367(d) implements stop-clock tolling, but the term plainly refers to *state* tolling laws, almost none of which "toll the running of the period of limitations" in the way petitioner suggests. *See supra* pp. 22-23. Indeed, given that Section 1367(d) is concerned with the federal court's dismissal of supplemental claims that are time-barred, the better reading is that Section 1367(d) applies "where state law might fail to toll the running [out of] the period of limitations while a supplemental claim is pending in federal court." *Cf.* 54 C.J.S., *Limitations of Actions* § 85, at 121 (1987) ("the statute of limitations, the running of which would otherwise bar the cause of action, may be tolled").

P.3d 56, 63 (Cal. 2014)). Even if "mere silence in the legislative history" were probative—and it is not, *see Whitfield v. United States*, 543 U.S. 209, 216 (2005) (citing cases)—a simple comparison of the language reveals that it would be an astonishing coincidence if Section 1367(d) were not the direct descendent of the ALI recommendation.[12]

Under a heading titled "Raising of jurisdictional issues; tolling of statute of limitations," ALI proposed the following statutory language:

> If any claim in an action timely commenced in a federal court is dismissed for lack of jurisdiction over the subject matter of the claim, a new action on the same claim brought in another court shall not be barred by a statute of limitations that would not have barred the original action had it been commenced in that court, if such new action is brought in a proper court, federal or State, within thirty days after dismissal of the original claim has become final or within such longer period as may be available under applicable State law.

ALI, *Study of the Division of Jurisdiction Between State and Federal Courts* 65 (1969) ("ALI Study"). As petitioner recognizes (at 29, 30), this language "provides a 30-day . . . period for the refiling of certain claims" and "support[s]" respondent's position on the

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[12] At the suggestion of the Chief Justice, ALI undertook a multi-year effort to propose legislation that would "achieve a proper jurisdictional balance between the federal and state court systems . . . in light of the basic principles of federalism." ALI, *Study of the Division of Jurisdiction Between State and Federal Courts* 1 (1969) ("ALI Study"). As petitioner acknowledges (at 30), that study was well known to the legislators involved in drafting the Judicial Improvements Act.

meaning of Section 1367(d). The ALI Reporter's note, in turn, explains that this language provides that "in any case in which the dismissal was for lack of jurisdiction,"

> any governing statute of limitations is tolled by the commencement of an action in a federal court, and for at least thirty days following dismissal.

ALI Study at 66.

Section 1367(d) provides in substantially identical terms that

> the period of limitations . . . shall be tolled while the claim is pending and for a period of 30 days after it is dismissed.

In addition, both the ALI proposal and Section 1367(d) contain an express proviso that the federal statute shall not apply if a "longer . . . period" is available under state law.

Petitioner's contention (at 29) that Congress "pointedly did not adopt [ALI's] recommendation" accordingly rings hollow. And if the textual comparison were not enough, scholars this Court has acknowledged as having "detailed, specific knowledge of the statute and the drafting process," *Exxon*, 545 U.S. at 570, have recognized that Section 1367(d) "implements" the ALI recommendation. Mengler *et al.*, *Congress accepts Supreme Court's invitation to codify supplemental jurisdiction*, 74 Judicature 213, 216 & n.28 (1991); *see also* McLaughlin, *The Federal Supplemental*

Jurisdiction Statute—A Constitutional and Statutory Analysis, 24 Ariz. St. L.J. 849, 982 (1992) (same).[13]

Moreover, when ALI later proposed comprehensive revisions to Section 1367 as part of its Federal Judicial Code Revision Project, it explained that its proposal "follows present § 1367(d) in providing a 30-day tolling period during which a dismissed supplemental claim can be filed in state court free of the bar of an otherwise applicable statute of limitations" and that "[t]he tolling provisions of present § 1367(d) and proposed new § 1367(f) are both direct descendants of the more general tolling provision proposed . . . in the Institute's 1969 Study." ALI, *Federal Judicial Code Revision Project* 132, 134 (2004).

The drafting history of Section 1367(d) thus firmly supports respondent's reading of the statute.

D. Petitioner's remaining arguments lack merit.

Petitioner's remaining arguments do not change the proper statutory interpretation.

1. Petitioner's reliance on equitable tolling as the backdrop for her arguments about the meaning of "toll" is unavailing. While she claims (at 18) that "equitable tolling" is stop-clock tolling, that is far from established. *See Ibarra*, 502 U.S. at 4 n.2 (noting only what "[p]rinciples of equitable tolling *usually* dictate" (emphasis added)); *see also Phillips v. Heine*, 984 F.2d

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[13] Petitioner erroneously asserts (at 31) that "in *Exxon*, this Court refused to credit" the views of these scholars "because they were at odds with what '§ 1367 on its face permits.'" In fact, the Court, after holding that "§ 1367 by its plain text overruled" *Zahn v. International Paper Co.*, 414 U.S. 291 (1973), noted that the scholars had reached the same conclusion. 545 U.S. at 566, 570.

489, 492 (D.C. Cir. 1993) ("[Equitable] tolling does not bring about an automatic extension of the statute of limitations by the length of the tolling period. It gives the plaintiff extra time *only* if he needs it." (citation omitted)). Indeed, the courts of appeals are divided on whether equitable tolling provides litigants with a "reasonable" time to proceed or, as petitioner alleges, "stops the clock."[14]

Petitioner also nowhere explains how equitable tolling—which "asks whether federal courts may excuse a petitioner's failure to comply with *federal* timing rules," *Holland v. Florida*, 560 U.S. 631, 650 (2010)—is germane to defining "toll" in a statute that "provides a [federal] tolling rule that must be applied by state courts" to state-law claims, *Jinks*, 538 U.S. at 459 (addressing Section 1367(d)). Indeed, stop-clock tolling serves no federal purpose *whenever* it extends state statutes of limitations that—by virtue of the period's length or the swift action of the federal court—already provide the litigant with plenty of time to refile. In such cases, stop-clock tolling merely adds additional months or years to plainly sufficient state-law limitations periods.

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[14] *Compare Cada v. Baxter Healthcare Corp.*, 920 F.2d 446, 452-53 (7th Cir. 1991) (Posner, J.) (tolling provides a "reasonable" extension), *and Amini v. Oberlin Coll.*, 259 F.3d 493, 501 (6th Cir. 2001) (similar), *with Socop-Gonzalez v. INS*, 272 F.3d 1176, 1193-96 (9th Cir. 2001) (en banc) (tolling "stops the clock"), *and Cabello v. Fernández-Larios*, 402 F.3d 1148, 1155-56 (11th Cir. 2005) (same); *see also Simon v. Republic of Iraq*, 529 F.3d 1187, 1195 (D.C. Cir. 2008) (declining to decide the question), *rev'd on other grounds sub nom. Republic of Iraq v. Beaty*, 556 U.S. 848 (2009); *New Castle Cty. v. Halliburton NUS Corp.*, 111 F.3d 1116, 1126 n.11 (3d Cir. 1997) (same).

2. In an effort to show that Section 1367(d) implements stop-clock tolling, petitioner also leans heavily (at 20-22 & n.5) on a hodgepodge of cherry-picked statutes she alleges use "toll[]" in this sense. But even if petitioner's survey of the U.S. Code demonstrated that the word in *those* statutes refers to stop-clock tolling (and that is unclear), that would say little about the meaning of "toll" in *this* statute. *See Yates v. United States*, 135 S. Ct. 1074, 1082 (2015) (plurality opinion) (collecting cases "affirm[ing] that identical language may convey varying content when used in different statutes").[15]

As an initial matter, none of these statutes are related to the enactment of the supplemental jurisdiction statute. *See Reno v. Koray*, 515 U.S. 50, 56 (1995) (interpreting phrase in Sentencing Reform Act of 1984 with reference to a similar phrase in the Bail Reform Act of 1984, which were "enacted in the same statute"); *Gozlon-Peretz v. United States*, 498 U.S. 395, 407-08 (1991) (interpreting provision of the Anti-Drug Abuse Act of 1986 with reference to the Sentencing Reform Act of 1984). Nor do they share "a common purpose" with it. *Oscar Mayer & Co. v. Evans*, 441 U.S. 750, 756 (1979) (interpreting Section 14(b) of the Age Discrimination in Employment Act in light of Section 706(c) of Title VII); *see also Northcross v. Bd. of Ed. of Memphis City Sch.*, 412 U.S. 427, 428 (1973) (per curiam).

The only statute even in the same chapter as Section 1367(d)—and petitioner's premier example (at 12-13,

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[15] A number of the statutes cited by petitioner (at 22 n.5), simply use the word "toll[]," without more, and some do not involve statutes of limitations at all. *See, e.g.*, 15 U.S.C. § 6603(h) (the "[e]nforcement of obligations [is] merely tolled"); 15 U.S.C. § 6614(c)(3)(C) (class member "toll[ing] to the full extent provided under Federal law").

20-21)—is 28 U.S.C. § 1332(d), a 2005 statute codifying the part of the Class Action Fairness Act of 2005 ("CAFA"), Pub. L. No. 109-2, 119 Stat. 4 (2011), that extends federal diversity jurisdiction over "mass actions" that meet certain criteria. *See id.* § 1332(d)(2), (5)(B); *Standard Fire Ins. Co. v. Knowles*, 568 U.S. 588, 592 (2013). But the terms of Section 1332(d)(11)(D) provide only that "[t]he limitations periods . . . shall be deemed tolled during the period that the action is pending in Federal court." That is not stop-clock tolling—on its face or in any other respect. All the statute appears to do is implement for mass actions this Court's ruling in *American Pipe*, which, as discussed above, *see supra* p. 15, simply establishes *the fact* of tolling, while leaving the "tolling effect" to the appropriate state or federal law.

Moreover, "toll" is not the sort of "specialized statutory term[]" that would merit a tour through the U.S. Code. *Gozlon-Peretz*, 498 U.S. at 408. Unlike in *Gozlon-Peretz*, where the term at issue was "supervised release," which the Court found was "a unique method of post-confinement supervision invented by the Congress for a series of sentencing reforms," *id.* at 407, the meaning of "toll" is an ordinary one, as petitioner recognizes, *see* Pet. Br. 17 (referring to both "legal and general dictionaries"). Even if the word "toll" sometimes refers to stop-clock tolling, the presumption of uniform usage "'readily yields' . . . when [the] word used has several commonly understood meanings among which a speaker can alternate in the course of an ordinary conversation, without being confused or getting confusing." *Gen. Dynamics Land Sys., Inc. v. Cline*, 540 U.S. 581, 595-96 (2004).

3. Finally, Petitioner supports her stop-clock reading of Section 1367(d) by asserting that "[i]t is

easy to see why Congress thought that a diligent litigant should have more [time]" to refile her state-law claims. Pet. Br. 28 (asserting that the diligent litigant could use that extra time to "find new counsel, and . . . reassess litigation strategy"). But that operation of the statute, which petitioner cuts from whole cloth, serves no federal jurisdictional purpose and defies common sense.

It is common ground that Section 1367(d) "guarantees" a federal forum for federal claims. *See* Pet. Br. 27. But nowhere is it evident why the statute's operation would discriminate among litigants based on when in the state limitations period the litigant chose to file suit.[16] While *a state* might have an interest in a litigant filing her claim long before the limitations period expires, that is hardly a federal concern, or one Section 1367(d) was enacted to address. Petitioner does not—and cannot—offer a justification for how discriminating among litigants "promotes the fair and efficient operation of the federal courts," *Jinks*, 538 U.S. at 463.

Indeed, as a practical matter, when a federal suit is filed likely has little to do with "diligence," but rather with purely practical matters, such as understanding

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[16] A simple example suffices. Imagine two litigants who each bring suit in federal court alleging an identical state-law claim governed by a two-year statute of limitations. In each case, after several years of litigation, the claim is dismissed under Section 1367(c). The first litigant, however, brought suit the week before the statute of limitations was to expire, while the second litigant brought suit within 90 days of the claim's accrual. Under petitioner's view of the statute, the first litigant will have just over a month after dismissal of her federal suit to bring suit in state court. The second litigant will have just short of *two years*.

of the legal claim, development of evidence to substantiate it, opportunity for non-judicial resolution, urgency for a determination of legal rights, access to counsel, and concerns about stale evidence and forgetful witnesses. The time permitted to bring suit on the federal claim, or the fact that some state-law claims have shorter limitations periods than others, are also significant factors—and both are present here: Artis had 90 days after the issuance of her right-to-sue letter to file her Title VII claim, *cf. Mohasco Corp. v. Silver*, 447 U.S. 807, 825 (1980) ("Congress clearly intended to encourage the prompt processing of all charges of employment discrimination."); and the statute of limitations on her state-law whistleblower claim was on the verge of expiring. *See supra* p. 6 & n.2.

As Artis's own case demonstrates, one can hardly discern by reference to the time of filing alone which plaintiffs are diligent and which are dilatory. Nor does it make any sense that the reward for a plaintiff who is diligent on the front end of her litigation would be the prerogative to be dilatory on the back end.

II. Petitioner's Reading Of Section 1367(d) Lacks The Clear Statement From Congress It Would Require And Raises Significant Constitutional Questions.

Petitioner interprets Section 1367(d) to displace state-law tolling periods and permit a disappointed federal litigant to file her state-law suit months or even years after the state statute of limitations otherwise would have expired. That misreads the statute for the reasons discussed. But even if "toll[]" in Section 1367(d) were susceptible to petitioner's interpretation, it could not be adopted. It falls far short of satisfying the ordinary rule of statutory construction that if Congress intends to alter the

"usual constitutional balance between the States and the Federal Government, it must make its intention to do so unmistakably clear in the language of the statute." *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991) (internal quotation marks omitted); *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947) ("[W]e start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress."). And because petitioner's interpretation raises serious constitutional questions—*viz.*, whether Congress may, for no federal purpose, extend state statutes of limitations and displace state-law tolling periods—Section 1367(d) should be construed to avoid those questions. This Court's decision in *Jinks* (*cf.* Pet. Br. 32-33) is not to the contrary.[17]

A. There is no clear statement that Congress intended to extend state statutes of limitations and displace state-law tolling periods via stop-clock tolling.

1. "Federal statutes impinging upon important state interests 'cannot . . . be construed without regard to the implications of our dual system of government.'" *BFP v. Resolution Trust Corp.*, 511 U.S. 531, 544 (1994). The states' prerogative to set statutes of limitations is widely acknowledged. Statutes of limitations "represent a public policy about the privilege to litigate," *Chase Sec. Corp. v. Donaldson*, 325 U.S. 304,

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[17] While the District has a unique relationship with the federal government, *cf.* BIO 14 & n.4, it is a "State" for purposes of Section 1367, *see* 28 U.S.C. § 1367(e), and this Court should consider the constitutional implications of petitioner's interpretation, whether as a matter of constitutional avoidance, *see infra* pp. 46-49, or on the merits, *see* States Am. Br. Part II.

314 (1945), and "have long been respected as fundamental to a well-ordered judicial system," *Tomanio*, 446 U.S. at 487. "[T]he time after which suits or actions shall be barred, has been, from a remote antiquity, fixed by every [government], in virtue of that sovereignty by which it exercises its legislation for all persons and property within its jurisdiction." *M'Elmoyle v. Cohen*, 38 U.S. (13 Pet.) 312, 327 (1839); *cf. Felder v. Casey*, 487 U.S. 131, 138 (1988).

State limitations periods also necessarily depend on—and vary because of—local considerations.[18] "[T]he length of the [limitations] period" in state law "reflects . . . the point at which the interests in favor of protecting valid claims are outweighed by the interests in prohibiting the prosecution of stale ones." *Johnson*, 421 U.S. at 463-64; *see also Tomanio*, 446 U.S. at 487; *United States v. Kubrick*, 444 U.S. 111, 117 (1979). As such, limitations periods reflect quintessentially "legislative decision[s]," *Hardin*, 490 U.S. at 544, and "value judgment[s]," *Johnson*, 421 U.S. at 463.

Tolling, too, is "an integral part of a complete limitations policy." *Tomanio*, 446 U.S. at 488; *Wallace v. Kato*, 549 U.S. 384, 394 (2007). "In virtually all statutes of limitations the chronological length of the limitation period is interrelated with provisions regarding tolling, revival, and questions of application." *Johnson*, 421 U.S. at 464; *see also Burnett*, 380 U.S. at 431-32 & n.9 (listing state statutes that "preserv[e] causes of action which would otherwise be barred by the passing of a limitation period"). This Court has accordingly

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[18] For example, the statutes of limitations for breach of a written contract vary from three years in the District (D.C. Code § 12-301(7)), to six years in New York (N.Y. Civ. Prac. L. & R. § 213(2)), to 10 years in Illinois (735 Ill. Comp. Stat. § 5/13-206).

long cautioned against displacing both state statutes of limitations and state-law tolling rules. *See, e.g.*, *Hardin*, 490 U.S. at 539 ("Courts . . . should not unravel state limitations rules unless their full application would defeat the goals of the federal statute at issue.").

In enacting Section 1367(d), a statute that "toll[s]" periods of limitations for state claims "unless State law provides for a longer tolling period," Congress has self-consciously legislated in an area in which states have a traditional interest. Moreover, it is undisputed that "the interpretation urged by petitioner would have a profound effect on that interest." *BFP*, 511 U.S. at 544. Specifically, petitioner asserts (at 17-22) that Section 1367(d) implements stop-clock tolling, which has two certain effects. First, state statutes of limitations are extended for as much time as is left on the limitations period when the plaintiff files the federal suit (Pet. Br. 3, 17-19), plus 30 days, even where the original limitations period may provide the litigant with months or years to refile. Second, state-law tolling periods are superseded whenever they are not "longer" than what plaintiff would receive under Section 1367(d) (Pet. Br. 18 & n.3). By contrast, if Section 1367(d) provides for a 30-day period to refile after the federal-court dismissal, it applies only in limited circumstances because most states "provide[] for a longer tolling period," *see supra* pp. 22-23, and states without a state-law tolling period—like the District of Columbia here—have their statutes of limitations affected only to the extent that a disappointed federal litigant is permitted a brief period to refile the claim in state court.

Section 1367(d) does not come close to manifesting the clear intent required for petitioner's reading of the statute.

This Court routinely cautions that "general language" is "insufficient to satisfy clear statement requirements." *Raygor*, 534 U.S. at 545. In *Raygor*, this Court considered whether Section 1367(d)'s language, which on its face applied to "any claim" asserted under Section 1367(a), extended to state-law claims first asserted against state actors in federal court. 534 U.S. at 542-46. The Court held that the modifier "any" in Section 1367(d), standing alone, was insufficient to find "unmistakably clear" congressional intent to alter the usual constitutional balance between the states and the federal government. *Id.* In *CTS Corp. v. Waldburger*, 134 S. Ct. 2175 (2014), this Court likewise read the statutory phrase "applicable limitations period" narrowly, in part because "[i]n our federal system, there is no question that States possess the traditional authority to provide tort remedies to their citizens as they see fit." *Id.* at 2189 (internal quotation marks omitted); *see also Bond v. United States*, 134 S. Ct. 2077, 2088-92 (2014) (construing "chemical weapon" narrowly to address the statute's "core concerns" and avoid "interpreting the statute's expansive language in a way that intrudes on the police power of the States"); *McDonnell v. United States*, 136 S. Ct. 2355, 2373 (2016) (declining to interpret "official act" in a manner that "involves the Federal Government in setting standards of good government for local and state officials" (internal quotation marks omitted)).

Such "general language" is also "insufficient" here. *Raygor*, 534 U.S. at 545. Section 1367(d) provides only that the "period of limitations . . . shall be tolled

. . . unless State law provides for a longer tolling period." The use of the word "toll" is not an express instruction for the extension of state-law limitations periods and the displacement of state-law tolling periods through stop-clock tolling. Nor is it "plain to anyone reading [Section 1367(d)]," *Gregory*, 501 U.S. at 467, that it has that effect—especially given, as this Court has long acknowledged, the myriad ways in which tolling can operate, *see supra* pp. 14-15. There is simply no sign in the statutory context or the drafting history that Congress intended Section 1367(d) to have the operation ascribed to it by petitioner, and as petitioner rightly concedes (at 27), her interpretation is not necessary to ensure a federal forum for federal claims. *N.Y. State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 656 (1995) (looking to the "objectives of the [federal] statute as a guide to the scope of the state law that Congress understood would survive").

That is the end of the matter. Unless Congress manifests a clear intent to the contrary—and it has not—"federal legislation threatening to trench on" states' rights "should be treated with great skepticism, and read in a way that preserves a State's chosen disposition of its own power, in the absence of the plain statement *Gregory* requires." *Nixon v. Mo. Mun. League*, 541 U.S. 125, 140 (2004); *see also Rice*, 331 U.S. at 230. The word "toll[]" is not "limited to [petitioner's] reading, and neither statutory structure nor legislative history points unequivocally to a commitment by Congress" to implement stop-clock tolling. *Nixon*, 541 U.S. at 141. "The want of any 'unmistakably clear' statement to that effect . . . [is] fatal" to petitioner's argument. *Id.* (citation omitted).

2. Petitioner's claim (at 31) that her interpretation of Section 1367(d) raises no "federalism concerns" is perfunctory and lacks merit.

As an initial matter, petitioner confuses Congress's power to enact Section 1367(d) with whether there is a sufficiently clear statement that Congress intended to upset "the usual constitutional balance of federal and state powers." *Gregory*, 501 U.S. at 460 (internal quotation marks omitted). *Jinks* answered only the former question; it had no need to address, let alone resolve, the latter. *See Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 56-58 (1996) (distinguishing between whether Congress provided a "'clear' statement" from "whether the Act was passed 'pursuant to a valid exercise of power'"); *cf. Reno v. Condon*, 528 U.S. 141, 149 (2000). Here, there is no clear statement that Congress intended—as a rule—to extend state statutes of limitations for months or years, or to displace state-law tolling schemes.

Petitioner's argument (at 33) that no clear statement is required to effect her conception of Section 1367(d)—because a clear statement of *some* displacement is a clear statement of *all* displacement—lacks merit. Even assuming that Section 1367(d) can be understood as an express statement that Congress intended to displace *something* about state statutes of limitations ("the period of limitations . . . shall be tolled")—and that is hardly certain—that says nothing about the *scope* of that displacement.

As this Court has explained, "when the text of a pre-emption clause is susceptible of more than one plausible reading, courts ordinarily 'accept the reading that disfavors pre-emption.'" *Altria Grp., Inc. v. Good*, 555 U.S. 70, 77 (2008) (quoting *Bates v. Dow Agrosciences*

LLC, 544 U.S. 431, 449 (2005)). Even where the language Congress chose "pre-empt[s] at least some state law, we must nonetheless 'identify the domain expressly pre-empted' by that language." *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 484 (1996) (citation omitted); *see also Cipollone v. Liggett Grp., Inc.*, 505 U.S. 504, 517 (1992). "If a federal law contains an express pre-emption clause, it does not immediately end the inquiry because the question of the substance and scope of Congress' displacement of state law still remains." *Altria*, 555 U.S. at 76.

Were it otherwise, that would give "mere congressional ambiguity" "the state-displacing weight of federal law," which "would evade the very procedure for lawmaking on which *Garcia* [*v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528 (1985),] relied to protect states' interests." *Gregory*, 501 U.S. at 464 (quoting Tribe, *American Constitutional Law* § 6-25, at 480 (2d ed. 1988)).

Indeed, this case demonstrates why there is nothing "misguided" (Pet. Br. 33) about applying those principles here, where the displacement petitioner is proposing is not so much a difference in degree as a difference in kind. Section 1367 ensures that the ability of a litigant to bring her federal claims in federal court is not frustrated by the threat that her state claims might be lost if the federal court ultimately declines to exercise jurisdiction over them. And that objective countenances "tolling" the bar of state statutes of limitations for a brief period after the claims are dismissed. But it remains, at best for petitioner, *unclear* whether Congress intended to materially extend state-law limitations periods and wholly displace state-law tolling provisions, particularly where doing so concededly serves no federal jurisdictional purposes. *That*

intrusion—if it was intended—requires a clear statement.[19]

Finally, petitioner argues (at 33-34) that because it is not *unprecedented* for federal law to displace state statutes of limitations, there is no actual "disrupt[ion]" of the "usual constitutional balance between the States and the Federal Government." That argument proffers a startling erosion of the principles of federalism and is not supported by the sole precedent on which petitioner relies, *United States v. Locke*, 529 U.S. 89 (2000). *Locke* addressed state laws that "bear upon national and international maritime commerce"—an archetypal area of federal concern. *Id.* at 108. Here, the issue is a federal statute that displaces state limitations rules for state-law claims being adjudicated in state courts. That area, quite unlike that in *Locke*, is unquestionably one that "States have traditionally occupied." *Id.*

Moreover, even if federal "statutes tolling state limitations periods go back at least 150 years" (Pet. Br. 33-34), it is striking that such statutes have been

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[19] *Gobeille v. Liberty Mut. Ins. Co.*, 136 S. Ct. 936 (2016), is not to the contrary. *See* Pet. Br. 33. There, the Court, having noted ERISA's exceptionally broad preemption clause, held that ERISA "certainly contemplated the pre-emption of substantial areas of traditional state regulation" and therefore "[a]ny presumption against pre-emption, whatever its force in other instances, cannot validate a state law that enters a fundamental area of ERISA regulation." *Id.* at 943, 946. Other circumstances under which this Court has declined to apply the presumption against pre-emption are equally distinguishable. *See, e.g.*, *Puerto Rico v. Franklin Cal. Tax-Free Trust*, 136 S. Ct. 1938, 1946 (2016) (addressing Puerto Rico's entry into bankruptcy—an exclusively federal area—and holding that "the plain text of the Bankruptcy Code begins and ends our analysis").

reserved for exceptional cases.[20] Nothing about these or a handful of other statutes transforms the federal tolling of state statutes of limitations into an area with "a history of significant federal presence." *Locke*, 529 U.S. at 108; *see also Wyeth v. Levine*, 555 U.S. 555, 565 n.3 (2009). Moreover, whatever Congress's *power* to intrude into state prerogatives, *cf. Jinks*, 538 U.S. at 461-65, the point is that Congress did not exercise it here—let alone clearly so.

B. Reading Section 1367(d) to implement stop-clock tolling would raise serious doubt as to its constitutionality.

If Section 1367(d) were susceptible to petitioner's interpretation, serious doubt as to its constitutionality would require the Court to reject it. *See INS v. St. Cyr*, 533 U.S. 289, 300 (2001) ("[W]here an alternative interpretation of the statute is 'fairly possible,' [courts] are obligated to construe the statute to avoid [constitutional] problems." (citation omitted)); *Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 575 (1988); *Clark v. Martinez*, 543 U.S. 371, 381 (2005). That is particularly true where, as here, there is an alternative that is far more consonant with congressional intent.

Recognition of the limits of the Necessary and Proper Clause is an essential part of protecting the

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[20] Examples involve insurrection, *see Stewart v. Kahn*, 78 U.S. (11 Wall.) 493, 494 (1870) (upholding statute suspending limitations periods where it was not possible by "reason of resistance to the execution of the laws of the United States" to serve process); terms of military service, *see* Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. App. § 525; or sui generis aspects of the Bankruptcy Code, 11 U.S.C. § 108(c) (extending limitations periods while the automatic stay is in effect plus 30 days). *See Jinks*, 538 U.S. at 461 n.1.

federalism interests already addressed. The Clause provides that "Congress shall have Power . . . [t]o make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof." U.S. Const. art. I, § 8, cl. 18. The language of the Clause "makes clear that the Constitution's grants of specific federal legislative authority are accompanied by broad power to enact laws that are 'convenient, or useful' or 'conducive' to the authority's 'beneficial exercise.'" *United States v. Comstock*, 560 U.S. 126, 133-34 (2010) (quoting *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 413, 418 (1819)).

To be sure, "necessary" "does not mean 'absolutely necessary.'" *Id.*; *see also Jinks*, 538 U.S. at 462 ("The federal courts can assuredly exist and function in the absence of § 1367(d) . . . ."). But "respect for Congress's policy judgments . . . can never extend so far as to disavow restraints on federal power that the Constitution carefully constructed." *Nat'l Fed'n Indep. Bus. v. Sebelius*, 567 U.S. 519, 538 (2012) (opinion of Roberts, C.J.). Thus, "even when the end is constitutional and legitimate, the means must be 'appropriate' and 'plainly adapted' to that end." *Gonzales v. Raich*, 545 U.S. 1, 39 (2005) (Scalia, J., concurring in the judgment) (quoting *McCulloch*, 17 U.S. at 421)). "Moreover, they may not be otherwise 'prohibited' and must be 'consistent with the letter and spirit of the constitution.'" *Id.*

In *Jinks*, this Court rejected a facial challenge to the constitutionality of Section 1367(d). It concluded that the statute "is conducive to the administration of justice because it provides an alternative to the unsatisfactory options that federal judges faced when they

decided whether to retain jurisdiction over supplemental state-law claims that might be time barred in state court" and "eliminates a serious impediment to access to the federal courts on the part of plaintiffs pursuing federal- and state-law claims" by providing "the assurance that state-law claims asserted under § 1367(a) will not become time barred while pending in federal court." 538 U.S. at 462, 463-64 (citing Congress's power to "constitute Tribunals inferior to the supreme Court," and to "assure that those tribunals may fairly and efficiently exercise '[t]he judicial Power of the United States'" (citations omitted)). The Court was also "persuaded, and respondent d[id] not deny," that "§ 1367(d) is 'plainly adapted' to the power of Congress to establish the lower federal courts and provide for the fair and efficient exercise of their Article III powers." *Id.* at 464.

Petitioner's reading of Section 1367(d), however, transforms the statute from one concerned with the federal court's jurisdiction to one that, as petitioner effectively concedes (at 27), gratuitously regulates when state-law claims may be litigated in state courts. While "tolling" is no doubt a sufficient "alternative to the unsatisfactory options" federal courts faced before Section 1367(d) was enacted, *Jinks*, 538 U.S. at 462, petitioner interprets it to significantly extend state statutes of limitations and displace obviously generous state-law tolling periods, with no apparent relationship to Congress's authority over the establishment of the lower federal courts and oversight of their efficacy, *id.* at 463-64.

Even without petitioner's concession, her view of "tolling" at most bears a tangential relationship to something on which Congress is permitted to legislate. By stopping the clock on state statutes of limitations,

petitioner posits, Congress gave disappointed federal litigants months or years to refile their claims in state court, which, in turn, plays a part in ensuring that those litigants are not dissuaded from bringing their claims in federal court in the first place—even though a 30-day period after dismissal would accomplish the same result. But there is serious constitutional doubt whether such an overbroad approach is "really calculated to effect any of the objects entrusted to the [federal] government," particularly at the extreme (and potentially extremely common) end of what petitioner's view would countenance. *McCulloch*, 17 U.S. at 423; *see also Zivotofsky ex rel. Zivotofsky v. Kerry*, 135 S. Ct. 2076, 2104 (2015) (Thomas, J., concurring in part and dissenting in part) ("The [Necessary and Proper] Clause is not a warrant to Congress to enact any law that bears some conceivable connection to the exercise of an enumerated power.").

Moreover, while this Court determined in *Jinks* that Section 1367(d) was proper because "the tolling of limitations periods" did not "fall into the category of 'procedure' immune from congressional regulation," 538 U.S. at 465, there is no indication that the Court ever considered that Section 1367(d) involved the kind of needless intrusion petitioner advocates for here. If permitting Congress to intrude on state law and state sovereignty in this fashion—again, for no federal purpose—would not raise a significant concern that Congress was "reach[ing] beyond the natural limit of its authority" and "draw[ing] within its regulatory scope" things that would otherwise be outside it, *Sebelius*, 567 U.S. at 560 (opinion of Roberts, C.J.), it is difficult to imagine what would.

CONCLUSION

The judgment of the District of Columbia Court of Appeals should be affirmed.

Respectfully submitted,

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STATUTORY ADDENDUM

STATUTORY ADDENDUM

28 U.S.C. § 1367. Supplemental jurisdiction.

(a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

(b) In any civil action of which the district courts have original jurisdiction founded solely on section 1332 of this title, the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure, or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332.

(c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if—

(1) the claim raises a novel or complex issue of State law,

(2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,

(3) the district court has dismissed all claims over which it has original jurisdiction, or

(4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

(d) The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.

(e) As used in this section, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

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IN THE
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STEPHANIE C. ARTIS,
Petitioner,

v.

DISTRICT OF COLUMBIA,
Respondent.

On Writ of Certiorari to the
District of Columbia Court of Appeals

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28 U.S.C. §1367(d) provides that the "period of limitations" for a supplemental jurisdiction claim "shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period." This Court should hold that "tolled" means "suspended." The evidence favoring this interpretation is overwhelming. Black's Law Dictionary defines "tolled" as "suspended." This Court's cases have repeatedly taken the same view. And in other statutes, "tolled" invariably means "suspended."

Respondent interprets "period of limitations ... shall be tolled" to mean "bar associated with the expiration of the period of limitations ... shall be removed"—such that §1367(d) merely removes the time bar during the statutorily-defined tolling period while the limitations clock keeps running. That interpretation rewrites the statute. Respondent's interpretation of "tolled" is inconsistent with ordinary usage, and makes nonsense out of numerous statutes that use "tolled." Meanwhile, grace period statutes *never* use "tolled" in the manner posited by Respondent.

Given the textual weaknesses in its position, Respondent leans on appeals to statutory purpose and legislative history, as well as an implausible constitutional avoidance argument. Those arguments cannot overcome the clear statutory text, and fail on their own terms.

I. Respondent's Interpretation Cannot Be Reconciled With the Statutory Text.

Respondent contends that under §1367(d), "tolled" means "removed." Thus, according to Respondent,

§1367(d) merely removes the limitations bar during the statutorily-defined tolling period, while the limitations period keeps running.

As a textual matter, Respondent's interpretation results in garbled English, renders a portion of the statute superfluous, and yields an absurdity.

Garbled English. Respondent overlooks that under §1367(d), it is the "*period of limitations*"—*i.e.*, the time period during which the plaintiff may sue—that is "tolled." Thus, if Respondent were correct that "tolled" means "removed," then §1367(d) would say that the "period of limitations ... shall be removed."

This is garbled English. A period of time cannot be "removed." Under Respondent's theory, it is the *bar associated with the expiration of the* period of limitations that is "removed"—not the period of limitations itself. Respondent offers no sound basis for rewriting the statute's operative phrase—"period of limitations"—as a different phrase—"bar associated with the expiration of the period of limitations."

By contrast, interpreting "tolled" as "suspended" does not require rewriting the statute, because it is natural to say that a time period is suspended. For instance, the phrases "the 5-minute rebuttal period was suspended while the microphone was fixed" or "the 2-minute penalty period was suspended while the play was stopped" are correct English, and mean that the clock stops.

Superfluity. Section 1367(d) enacts two tolling periods: (a) while "the claim is pending"; and (b) "for a period of 30 days after it is dismissed." Respondent's

interpretation renders the first tolling period superfluous. Under Respondent's view, the statute would work in the exact same way if it merely provided that the time bar was "removed" for 30 days after the claim was dismissed.

Respondent insists that the first tolling period is not superfluous because it "remove[s] any limitations bar that goes into effect during the enumerated period." D.C.Br.20. But it is unnecessary to say that the time bar is "removed" while the claim is pending in federal court. The time bar does not become relevant until after the case is dismissed and refiled in state court.

This superfluity becomes especially stark in situations where the federal court dismisses the state-law claims when there are more than 30 days left on the limitations clock. In those situations, under Respondent's view, §1367(d) would have *no* effect. Respondent argues that this outcome makes sense as a policy matter, D.C.Br.21, but it is nonsensical as a textual matter. Section 1367(d) says that the "period of limitations ... shall be tolled while the claim is pending" in federal court. Yet under Respondent's view, *nothing happens* to the "period of limitations"—the time period in which the plaintiff may sue is identical to what it would have been had no tolling ever occurred.

By contrast, Petitioner's interpretation harmonizes with the statutory text: The limitations period is suspended while the claim is pending in federal court, and for 30 days thereafter.

Absurdity. Respondent's interpretation would yield an absurdity. In Respondent's view, the limitations bar

would be removed during the 30-day grace period even if the state-law claim was *untimely* when the federal suit was brought. Suppose a federal court declines to exercise supplemental jurisdiction over a state-law claim to avoid deciding a difficult state-law statute of limitations question. Under Respondent's view, if the plaintiff refiled the state-law claim in state court within 30 days, the claim would automatically be timely, because the time bar would be "removed." By contrast, this would never happen under Petitioner's approach, because the clock would have already run out.

These textual anomalies are powerful evidence that Respondent's interpretation of §1367(d) is incorrect.

II. Respondent's Interpretation Is Inconsistent With the Ordinary Meaning of "Tolled."

As Petitioner's opening brief explains, dictionaries, cases, and other statutes confirm that Respondent's interpretation of §1367(d) is wrong. Pet.Br.17-26. Respondent's efforts to explain away these authorities are unsuccessful.

A. Dictionaries and Secondary Sources

For statutes of limitations, Black's Law Dictionary defines "toll" as "suspend or stop temporarily." Pet.Br.17. Respondent offers no persuasive reason to deviate from that definition.

Respondent points to a definition in Black's Law Dictionary—outside the statute of limitations context—equating "tolling" with "tak[ing] away." It cites other dictionaries offering similar definitions. D.C.Br.12-13. But these sources do not favor Respondent's position

over Petitioner's, because the time bar is "taken away" under *both* parties' interpretations—the parties agree that during the tolling period, the statute of limitations cannot expire. The parties disagree on a distinct question: whether the limitations period is suspended during the tolling period, as Petitioner contends, or keeps running during the tolling period, as Respondent contends. Respondent identifies no dictionary supporting its counterintuitive theory that a period of limitations can keep running while it is "tolled."

Respondent quotes a C.J.S. treatise for the proposition that tolling a statute of limitations "remove[s] its bar of the action." D.C.Br.13. The C.J.S. treatise lifts that phrase from *Smedley v. State Industrial Court*, 562 P.2d 847, 849 (Okla. 1977). *See* 54 C.J.S. *Limitations of Action* §133 (1987) (quoting *Smedley*). But *Smedley* also explains that the limitations period does *not* keep running during the tolling period: rather, the end of the tolling period triggers a fresh limitations period. 562 P.2d at 851. Moreover, the C.J.S. treatise later uses "toll" in a manner that plainly means "suspend." 54 C.J.S. *Limitations of Actions* §176 (equating "tolls the running of the statute of limitations" during a period with ensuring that this period is "not ... counted against that person in determining whether the statute of limitations" applies).

B. Case Law

Petitioner's brief identified several cases in which this Court has equated "tolled" with "suspended." Pet.Br.18-20. In response, Respondent claims to identify a conflicting line of cases interpreting "tolled"

consistent with its position. D.C.Br.14-19. Upon close inspection, Respondent's argument dissolves. This Court's cases do not support Respondent's idiosyncratic understanding of "tolled."

1. *The* Chardon *Case.*

Chardon v. Fumero Soto, 462 U.S. 650 (1983), on which Respondent relies (D.C.Br.14-15, 19), powerfully demonstrates why Respondent's proposed interpretation of "tolling" is incorrect.

Chardon addressed *American Pipe* tolling—the tolling of a plaintiff's claim "between the filing of an asserted class action and the denial of class certification." 462 U.S. at 654. The question presented was whether the "effect of the tolling" should be calculated under state or federal law. *Id.* at 651-52.

The Court observed:

> "Tolling effect" refers to the method of calculating the amount of time available to file suit after tolling has ended. The statute of limitations might merely be suspended; if so, the plaintiff must file within the amount of time left in the limitations period. If the limitations period is renewed, then the plaintiff has the benefit of a new period as long as the original. It is also possible to establish a fixed period such as six months or one year during which the plaintiff may file suit, without regard to the length of the original limitations period or the amount of time left when tolling began.

Id. at 652 n.1. The Court noted that *American Pipe* had applied the "common-law rule of suspension," *id.* at 655, also embodied in the Clayton Act: the clock stops during the tolling period. *Id.* The Court held, however, that for state-law claims, Puerto Rico could apply its rule that "the statute of limitations begins to run anew when tolling ceases." *Id.*

Thus, *Chardon* identified two types of "tolling effects": (1) the clock stops during the tolling period, and then resumes at the end; (2) the plaintiff gets a fixed period after tolling ends. *Id.* at 652 n.1.

Under Respondent's interpretation, however, the clock *keeps going* during the tolling period. That "tolling effect" conforms to *neither* of the "tolling effects" recognized by *Chardon*—and on *Chardon*'s facts, that "tolling effect" would make no sense. *Chardon* defined the tolling period as the time "between the filing of an asserted class action and the denial of class certification." *Id.* at 654. *American Pipe* tolling's purpose is to ensure that a plaintiff can file a new lawsuit *after* the tolling period. Thus, if "tolled" simply meant "removed the limitations bar during the tolling period while the clock continues to run," *American Pipe* tolling would be useless.

By contrast, Petitioner's approach hews perfectly to *Chardon*. In *Chardon*, the Court noted that suspension is the "common-law rule" applied in *American Pipe*, *id.* at 655, but that states were free to offer more generous limitations periods. Section 1367(d) works in the same

way. It embodies the common-law suspension rule,[1] but if, as in *Chardon*, a state elects to enact a more generous tolling rule, §1367(d) authorizes the state to do so.

2. *Other cases.*

Like *Chardon*, the other cases Respondent cites do not support Respondent's position.

Hardin v. Straub, 490 U.S. 536 (1989), on which Respondent relies, offers little assistance. In *Hardin*, this Court held that in §1983 suits, federal courts should give effect to state tolling statutes. The state statute there was an unambiguous "grace period" statute—it did not use the word "toll," but instead gave a plaintiff "1 year after the disability is removed" to bring suit. *Id.* at 540 (quoting Mich. Comp. Laws Ann. §600.5851(1)). The Court held that "[a] State's decision to toll the statute of limitations during the inmate's disability does not frustrate §1983's compensation goal." *Id.* at 543. This statement contradicts Respondent's interpretation of "tolling"—it uses "toll" to mean giving the plaintiff extra time after the tolling period, whereas in Respondent's view, §1367(d) has no effect after the tolling period.

Respondent cites a statement in the Court's summary of the lower court's holding characterizing the

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[1] Petitioner does not contend that §1367(d) embodies the even more generous approach described in *Chardon*, in which the clock resets to zero after the tolling period. No court has interpreted §1367(d) this way, and in context this interpretation would not make sense. If the clock reset to zero *after* the 30-day period, the 30-day period—intended to protect litigants who filed suit late in the limitations period—would be unnecessary.

state statute as "suspend[ing] limitations periods for persons under a legal disability until one year after the disability has been removed." *Id.* at 537. This passing dictum, which neither quotes the relevant statute nor uses the word "toll," sheds little light on the meaning of §1367(d). It is outweighed by the myriad cases that characterize tolling as stopping the clock, one of which, in dicta, discusses §1367(d) itself. Pet.Br.18-20.

Strikingly, this dictum from *Hardin* is Respondent's best authority. No other case cited by Respondent even arguably uses "toll" or "suspend" as Respondent proposes. Respondent instead recites a series of cases using "toll" in the context of schemes that start a fresh limitations clock at the tolling period's conclusion. D.C.Br.15-16. In none of these cases does the underlying statute or rule use "toll." And in none does the Court suggest that the clock continues running during the tolling period.

Cases involving equitable tolling lend further support to Petitioner's interpretation. As Petitioner explained, this Court has held that "[p]rinciples of equitable tolling usually dictate" the suspension approach. Pet.Br.18 (citing *United States v. Ibarra*, 502 U.S. 1, 4 n.2 (1991) (per curiam)). One would expect "tolling" in §1367(d) to be consistent with what tolling "usually" means.

Respondent cites lower-court cases stating that equitable tolling provides only a "reasonable" extension after the tolling period concludes. D.C.Br.33. Even assuming this approach—which this Court has never endorsed—is correct, it is still inconsistent with

Respondent's interpretation, under which the plaintiff gets *no* time after the tolling period.

C. Other Statutes.

Other statutes provide remarkably powerful evidence in support of Petitioner's interpretation. A wide array of "tolling" statutes are consistent with Petitioner's position, while *none* support Respondent.

1. *Federal Statutes.*

Petitioner's opening brief quoted five federal statutes, and cited many more, under which Respondent's interpretation of "toll" is clearly wrong. Pet.Br.22-23 & n.5.

For instance, 28 U.S.C. §1332(d)(11)(D) permits removal of "mass action[s]" to federal court and states that the "limitations periods" on claims asserted in mass actions "shall be deemed tolled during the period that the action is pending in Federal court." Pet.Br.20-21. Respondent insists that this statute is compatible with its understanding of "tolling" (D.C.Br.35) but that simply is not so. The point of this statute is to ensure that the plaintiff can bring suit *after* the tolling period. Yet under Respondent's view, the statute has no effect after the tolling period. Rather, the statute's sole effect would be to prevent the statute of limitations from barring a claim during the precise period that a plaintiff will *not* bring suit: while the claim is already pending in a federal court mass action. This interpretation would render the statute meaningless.

Petitioner also cited 21 U.S.C. §1604, which provides that an "applicable statute of limitations shall toll during

the period" while an administrative claim is being exhausted. Pet.Br.21. Likewise, 42 U.S.C. §233(p)(3)(A)(ii) provides that a "time limit for filing a claim ... shall be tolled during the pendency of" an administrative claim. Pet.Br.21. Under these statutes, Respondent's interpretation of "tolled" is also clearly wrong. These statutes ensure that the claimant can file suit *after* the tolling period expires—*i.e.*, after the administrative claim is exhausted. They would be meaningless if the limitations bar were removed during the tolling period—*while* the administrative claim is pending—and then resurrected thereafter.

These statutes powerfully support Petitioner's position. In each of them, as in §1367(d), the limitations period is "tolled" while a claim is pending in another forum—and in each, it is obvious that the clock stops. Section 1367(d) provides a longer tolling period than those statutes—the limitations period is tolled not only while a claim is pending in federal court, but also for an additional 30 days. But the *length* of the tolling period does not affect the *meaning* of "tolling." The fact that Congress gave an extra 30 days of tolling in §1367(d) does not justify contorting the meaning of tolling from "stops running" into "continues running while the statute of limitations is unenforceable."

Another statute Petitioner quotes, 5 U.S.C. §552(a), gives the government 20 days to respond to certain FOIA requests, but provides that the agency may "toll the 20-day period while it is awaiting" information. Pet.Br.22. In this statute, "toll" obviously means "suspend," because the statute's goal is to ensure that time remains on the clock *after* the information is

received. The other statutes cited by Petitioner follow the same pattern. *Id.* at 22 n.5; *see, e.g.*, 8 U.S.C. §1186(g) ("90-day period ... shall be tolled during any period of time in which [spouse is serving abroad in military]"); 18 U.S.C. §2712(e) (stay of proceedings "shall toll ... limitations periods"); 49 U.S.C. §41714(i)(3) ("60-day period tolled during timely request for more information"). These statutes are nonsensical under Respondent's interpretation; they make sense only if the limitations period resumes running *after* tolling concludes.[2]

Yet another statute quoted by Petitioner is 46 U.S.C. §53911(d), entitled "Tolling of limitations period"—virtually identical to the phrase in §1367(d). It states that if a claim for war-related vessel damage is submitted to the Secretary of Transportation, "the running of the limitations period for bringing a civil action is suspended until the Secretary denies the claim, and for 60 days thereafter." Pet.Br.21. This statute, then, clarifies that "tolling of limitations period" means "the running of the limitations period ... is suspended." And it uses "tolled" to mean "suspended" in a scheme closely similar to §1367(d)'s scheme—the tolling period

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[2] Respondent asserts that some of these statutes "do not involve statutes of limitations," citing two examples: 15 U.S.C. §6603(h)(5) and §6614(c)(3)(C). D.C.Br.34 n.15. On §6614(c)(3)(C), Respondent is wrong: it is entitled "Period of limitations tolled." Section 6603(h)(5) is entitled "Enforcement of obligations merely tolled"; it clarifies that "tolled" means "delay[ed]"—just as, under the suspension approach, tolling delays the limitation period's expiration. Even if §6603(h)(5) is ambiguous, every other cited statute unambiguously "tolls" a time period.

is suspended not only during the claim's pendency in the administrative forum, but also for 60 days thereafter.

Respondent derides these statutes as "cherry-picked." D.C.Br.34-35. But Respondent offers *zero* counter-examples of *any* federal statutes in which "tolled" could even arguably carry Respondent's proposed interpretation. And none of the "grace period" statutes identified by Petitioner use the term "tolled." Pet.Br.24-25. Given that Congress apparently *never* uses "tolled" in the manner Respondent proposes, the Court should not adopt Respondent's idiosyncratic interpretation of §1367(d).

2. *State Statutes.*

State statutes provide further evidence that Respondent's interpretation of "tolled" is wrong.

Respondent claims that §1367(d) was modeled after state "extender" statutes, which provide grace periods to refile claims in an appropriate court. D.C.Br.22-25. It cites an amicus brief appendix that lists these statutes. D.C.Br.22 (citing State Legislatures Am. Br., App.).

That appendix quotes the statutes of 40 states, 34 of which are identified as statutes providing a fixed grace period. State Legislatures Am. Br., App. i-iii. *Zero* use "toll." *All* of them use the type of unquestionable grace period language that Congress eschewed in §1367(d).

The statutes of two other states—Michigan and Wisconsin—do use "toll," and are characterized by the amicus brief as having an "uncertain tolling effect." *Id.* at ii-iii, 10a-11a, 24a-25a. Contra the amicus brief,

however, it is *certain* from these statutes that Respondent's interpretation of "tolled" is wrong.

Wisconsin's statute provides, *inter alia*, that a statute of limitations "is tolled from the period of commencement of the action in a non-Wisconsin forum until the time of its final disposition in that forum." *Id.* at 25a. Michigan's statute provides, *inter alia*, that a statute of limitations "is tolled" during a "notice period under section 2912b." *Id.* at 11a. That notice period, in turn, is a period during which the plaintiff *cannot* bring suit. Mich. Comp. Laws §600.2912b(1).[3]

These statutes are intended to ensure that the plaintiff can bring suit *after* the tolling period. These statutes are therefore irreconcilable with Respondent's interpretation, which merely lifts the limitations bar during the tolling period while the clock keeps running.

Thus, state statutes are consistent with federal statutes. Grace period statutes *never* state that the statute of limitations is "tolled" during the grace period. If Congress had wanted to enact a grace period statute, it would not have used "tolled."

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[3] One other statute quoted by the amicus uses "tolled." Virginia's extender statute generally applies the suspension approach, but for certain suits, it provides that statutes of limitations are "tolled by the commencement of" the suit, and then provides an express six-month grace period after dismissal. State Legislatures Am. Br., App. 23a. This statute does not support Respondent: it does not suggest the statute of limitations is tolled *during* the six-month period.

III. Respondent Identifies No Reason To Deviate From the Text.

Respondent advances several arguments for deviating from the ordinary meaning of "tolled." Each fails.

A. Purpose

Respondent insists that Petitioner's interpretation would result in tolling periods that are excessively long, contrary to the statute's perceived purpose. D.C.Br.20-22, 25-28. That argument lacks merit.

This Court has explained that suspension is the "common-law" method of tolling, *Chardon*, 462 U.S. at 655, which is "usually" used. *Ibarra*, 502 U.S. at 4 n.2. As catalogued above, statutes employing this approach are ubiquitous in the U.S. Code. *Supra* at 10-13.

And for good reason. The suspension approach makes sense. "Statutes of limitations are designed to encourage plaintiffs 'to pursue diligent prosecution of known claims.'" *Cal. Pub. Emps. Ret. Sys. v. ANZ Sec., Inc.*, 137 S. Ct. 2042, 2049 (2017) (quoting *CTS Corp. v. Waldburger*, 134 S. Ct. 2175, 2183 (2014)). Thus, statutes of limitations define a period of dormancy that extinguishes a claim; they ensure that a plaintiff who sleeps on her rights for a long enough period, loses her rights. The suspension approach treats plaintiffs fairly by excluding, from the calculation of that period, the time during which the plaintiff is *not* sleeping on her rights, but is instead actively litigating in federal court. And it rewards plaintiffs who file suit diligently by giving them more time to refile after dismissal—while causing little prejudice to defendants, who cannot claim

surprise from claims that were already filed in federal court. Pet.Br.26-29.

Respondent advances policy arguments favoring a shorter tolling period. D.C.Br.25-28. But the statutory text makes clear that Congress rejected those policy arguments in favor of the traditional suspension approach. Respondent's policy arguments do not justify deviating from this text.

History also bolsters Petitioner's interpretation. For over a century, federal statutes have stopped the clock on state-law limitations periods. In *Jinks v. Richland County*, the Court observed that it had "upheld as constitutional a federal statute that tolled limitations periods for state-law civil and criminal cases for the time during which actions could not be prosecuted because of the Civil War." 538 U.S. 456, 462 (2003) (citing *Stewart v. Kahn*, 78 U.S. (11 Wall.) 493 (1871)). That statute "tolled limitations periods," *id.*, by stopping the clock. *Stewart*, 78 U.S. (11 Wall.) at 504 (quoting statute providing that this time period "shall not be deemed or taken as any part of the time limited by law for the commencement of such action"). Likewise, in 1940, Congress enacted legislation stopping state-law limitations clocks while a party was in military service. *Jinks*, 538 U.S. at 461 n.1. Congress reasonably made the same choice in §1367(d).

Unlike in those prior statutes, in §1367(d), Congress decided to toll limitations periods for an extra 30 days after federal dismissal. Doing so makes sense: it protects litigants who file their federal suits at the very end of the limitations period by giving them extra time after federal dismissal to refile their state-law claims.

Pet.Br.28. Similar statutes appear elsewhere in the U.S. Code. *See supra* at 12-13 (discussing 46 U.S.C. §53911(d)); 28 U.S.C. §2263(b) (providing that 180-day clock is tolled while claim is pending in other forum, and for 30 extra days if certain conditions are met).

Respondent deems absurd Congress's choice to give *all* litigants an extra 30 days, rather than only those litigants who file suit near the limitations period's end. D.C.Br.21-22. Respondent apparently believes Congress should have enacted some kind of sliding-scale scheme, where litigants who file at the beginning of the limitations period get only stop-clock tolling and litigants who file near the end get stop-clock tolling plus additional time. Although Congress could have enacted such a scheme, Congress evidently concluded that giving everyone the same tolling period—the pendency of the federal suit, plus 30 days—was simpler and more administrable. This was a reasonable policy choice, and Respondent offers no basis for warping the statutory text to avoid implementing that choice.[4]

B. State Law Backdrop

Respondent argues that §1367(d) was modeled after state "grace period" statutes. D.C.Br.22-25. As explained above, those statutes contradict Respondent's

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[4] Respondent asserts that a 30-day period "tracks the period of time that would follow a garden-variety remand of removed claims." D.C.Br.27 n.10. If Respondent is referring to 28 U.S.C. §1447(c), which requires a request for remand to state court to be made within 30 days of removal, that statute has no evident relevance to §1367(d).

proposed interpretation. *None of them* uses "toll" in the way suggested by Respondent. *Supra* at 13-14.

Respondent maintains that Petitioner's approach would override state tolling statutes providing for a grace period longer than 30 days. It is not clear how many of these statutes would apply, as a state-law matter, to claims dismissed under §1367(d). *See, e.g., Rector v. DACCO, Inc.*, No. M2005-00294-COA-R9-CV, 2006 WL 1749525, at *4 (Tenn. Ct. App. June 26, 2006) (refusing to apply Tennessee extender statute to such claims). But if they did apply, they would still have effect under the suspension approach if they offered a longer tolling period than the federal statute. For instance, Respondent cites a Texas statute providing a 60-day grace period following a claim's dismissal. If a plaintiff filed a Texas law claim in federal court with 5 days left in the limitations period, and it was dismissed under §1367(d), the Texas law would apply because it would give the plaintiff 60 more days, whereas the federal statute would provide only 35 more days.

Respondent questions this result because the Texas statute is not a "tolling" statute under Petitioner's view. D.C.Br.19 n.4. But in the above scenario, the Texas statute would yield the mathematical equivalent of a tolling period of the pendency of the federal suit, plus 55 days—exceeding the federal tolling period. In Petitioner's view, it would thus provide a "longer tolling period" under §1367(d). In any event, this question is not presented here.

C. Legislative History

Respondent's citation of legislative history is unhelpful in interpreting §1367(d).

Respondent contends that in §1367, Congress intended to implement the 1969 ALI Study's recommendation for a 30-day grace period. It is undisputed that Congress neither mentioned the ALI study in the legislative history of §1367(d), nor adopted the ALI's proposed language unambiguously providing for a 30-day grace period. Pet.Br.29-30. Undeterred, Respondent points to a "ALI Reporter's note," which includes language somewhat similar to §1367(d). D.C.Br.31. The ALI Study states that Reporter's notes reflect "the Reporters' work alone," rather than the view of the ALI majority. ALI Study, p. x. Nevertheless, Respondent theorizes that §1367(d) reflects Congress's effort to enact the ALI Reporter's note, which in turn signals Congress's agreement with the ALI's proposal. D.C.Br.31.

Questions abound. If Congress wanted to follow the ALI's recommendation, why would it: (a) not cite the ALI report in the legislative history of §1367(d) while citing it in the legislative history of other provisions, (b) also not adopt the ALI's proposed statute, which plainly enacts a grace period, and (c) not even adopt the ALI Reporter's language, but instead rewrite that language? Rather than follow this unusually unhelpful legislative history, the Court should follow the statute as written.[5]

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[5] The document prepared by the ALI in 2004 (D.C.Br.32) is even less helpful in interpreting §1367(d). "Post-enactment legislative history ... is not a legitimate tool of statutory interpretation,"

D. Clear-Statement Rule.

Respondent maintains that the suspension approach to §1367(d) infringes on state sovereignty, and therefore should apply only if Congress made a "clear statement." D.C.Br.38-46. Section 1367(d) is clear enough to overcome any clear-statement rule; nevertheless, no clear-statement rule applies.

First, in the context of §1367(d), this Court has held that the clear-statement canon applies only in cases of constitutional doubt. In *Raygor v. Regents of University of Minnesota*, 534 U.S. 533 (2002), the Court held that §1367(d) did not apply to state-law claims against nonconsenting state governments that federal courts dismissed on Eleventh Amendment grounds. *Id.* at 542. The Court applied a clear-statement rule, because a contrary interpretation would have raised the serious question of whether state sovereign immunity had been unconstitutionally abrogated. *Id.* at 543. Subsequently, in *Jinks*, the Court considered whether §1367(d) applied to suits against state political subdivisions. The Court declined to apply a clear-statement rule, distinguishing *Raygor* on the ground that applying §1367(d) to claims against state subdivisions yielded "no ... constitutional doubt." 538 U.S. at 466. Here, Respondent does assert a constitutional avoidance argument; but if the Court rejects that argument, as Petitioner advocates below, then *Jinks* holds that the clear-statement rule does not otherwise apply.

Bruesewitz v. Wyeth LLC, 562 U.S. 223, 242 (2011). Post-enactment ALI reports are doubly illegitimate.

Even if a clear-statement rule applied outside the constitutional avoidance context, it would not apply here for two reasons. First, Respondent's concerns that the suspension approach infringes on state sovereignty are exaggerated. Under the suspension approach, §1367(d) regulates the effect of a statute of limitations on a claim properly brought in federal court, while that claim is pending in federal court. This effect is readily understood as regulating federal court litigation and hardly constitutes the type of gratuitous intrusion into state law that warrants a clear-statement rule. Indeed, the suspension approach to §1367(d) seems a lesser intrusion on state sovereignty than the application of §1367(d) in *Jinks*, which exposed states' own subdivisions to lawsuits that would otherwise be time-barred under state law. Yet, the Court held there that no clear-statement rule applied.

Second, unlike the cases Respondent cites (D.C.Br.41), this is not a case where one interpretation of a statute would alter the constitutional balance of power and the other would not. For instance, this case is not comparable to *Raygor*, where the Court was faced with dueling interpretations of §1367(d), one of which would have abrogated state sovereign immunity and one of which would have left claims against state governments unaffected. To the contrary, under *either* party's interpretation, §1367(d) imposes a tolling period defined by federal law. Indeed, on its face, the question presented has nothing to do with state law; it simply asks whether an unquestionably federal time period is longer or shorter. Accordingly, the Court has no basis for applying a clear-statement rule.

Respondent nevertheless argues for a clear-statement rule under the following theory: Section 1367(d) imposes a baseline federal tolling period, with a savings clause stating that the tolling period can be lengthened—but not shortened—by state law. If the baseline federal tolling period is shorter, then statistically speaking, the savings clause will be triggered more often. Therefore, the Court should presume that Congress wanted the savings clause to be triggered frequently, and any ambiguity over the length of the federal tolling period should be resolved in favor of making it shorter. D.C.Br.38-46.

That approach conflicts with this Court's cases. This Court has explained that when a statute "contains an express pre-emption clause," the Court "do[es] not invoke any presumption against pre-emption but instead focus[es] on the plain wording of the clause." *Puerto Rico v. Franklin Cal. Tax-Free Trust*, 136 S. Ct. 1938, 1946 (2016) (internal quotation marks omitted); *accord Gobeille v. Liberty Mut. Ins. Co.*, 136 S. Ct. 936, 946 (2016) (declining to apply presumption against preemption when statute expressly "contemplated the pre-emption" of state law).

In §1367(d), Congress enacted an express federal tolling statute that should be construed according to its terms. Although a longer federal time period will have the ancillary effect of triggering the state savings clause less frequently, that is an insufficient basis for imposing an artificial clear-statement requirement.

E. Constitutional Avoidance

Contrary to Respondent's contention, adopting the suspension approach to §1367(d) would pose no constitutional concern.

In *Jinks*, this Court unanimously upheld the constitutionality of §1367(d). It concluded that Congress possesses the enumerated power "[t]o constitute Tribunals inferior to the supreme Court," and that §1367(d)'s tolling rule was "necessary and proper" for executing that power. 538 U.S. at 462 (quoting U.S. Const., Art.I, § 8, cl. 9); *see* Pet. Br. 32-33. Respondent nonetheless contends that because the grace-period approach gives plaintiffs sufficient time to refile their state-law claims in state court, the suspension approach exceeds Congress's powers. D.C.Br.46-49.

That argument lacks merit. In *Jinks*, this Court noted that the Necessary and Proper Clause does not demand "that an Act of Congress be 'absolutely necessary' to the exercise of an enumerated power"; it need only be "conducive to the due administration of justice in federal court, and ... plainly adapted to that end." 538 U.S. at 462 (quotation marks omitted). This Court subsequently explained that the "Necessary and Proper Clause grants Congress broad authority to enact federal legislation"; a statute is constitutional if it "constitutes a means that is rationally related to the implementation of a constitutionally enumerated power." *United States v. Comstock*, 560 U.S. 126, 134 (2010).

Congress's selection of the suspension approach is "rationally related to the implementation of" Congress'

power to constitute federal courts. The suspension approach treats federal-court plaintiffs fairly, by ensuring that the statute of limitations—the period of dormancy necessary to extinguish a lawsuit—excludes the time that the claim is *not* dormant, but is instead being litigated in federal court. It treats federal-court plaintiffs equally by giving them all the same tolling period. And it encourages diligent federal-court filings by giving plaintiffs who filed suit early in the limitations period extra time post-dismissal. The statute therefore falls within Congress's "broad authority." *Id.* at 133.

The same result would apply under the approach of all Members of the Court in *Comstock*. In *Comstock*, the Court's Members debated the scope of Congress's powers under the Necessary and Proper Clause, but even the dissent agreed that Congress has "a certain degree of latitude in selecting the means for 'carrying into Execution' an end that is 'legitimate.'" *Id.* at 167 (Thomas, J., dissenting). Here, Petitioner's argument is modest and does not require testing the outer boundaries of the Necessary and Proper Clause. Petitioner merely argues that if Congress has the power to extend state-law statutes of limitations and has some latitude in implementing that power, the suspension approach—the traditional, common-law approach toward tolling—does not exceed the boundaries of that latitude. Holding that §1367(d) is unconstitutional as written because the limitations period could have been shorter would reflect an unprecedented degree of micromanagement of congressional enactments.

Respondent advocates for a kind of least-restrictive-means approach to the Necessary and Proper Clause. It

maintains that if Congress *could* have enacted a shorter extension period, it constitutionally *must* do so. This Court has never adopted this approach, which would conflict with cases dating back to *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819) and would radically alter the balance of power between states and the federal government.

Respondent's argument is also ahistorical. As noted above, after the Civil War, Congress tolled state statutes of limitations by means of a stop-clock statute. *Supra* at 16. In *Stewart v. Kahn*, this Court upheld that legislation under the Necessary and Proper Clause. 78 U.S. (11 Wall.) at 506. The Court gave no indication that Congress's decision to enact a suspension statute, rather than a grace period statute, posed any constitutional concern.

Contrary to Respondent's concerns, the suspension approach would not aggrandize congressional power. Section 1367(d) stops the limitations clock on state-law claims filed *in federal court* for the period of their pendency *in federal court* (plus 30 more days). This fits Congress's authority over the federal courts like a key in lock. Indeed, given that a federal court has the unquestionable power to dismiss these claims with prejudice, stay these claims, or enter judgment on these claims, allowing the court to extend the limitations period on these claims is not some grave blow to state sovereignty. It is not remotely comparable to a statute requiring all Americans to buy health insurance, as Respondent implies. D.C.Br.49.

Finally, it bears noting that Respondent makes a constitutional *avoidance* argument; only its amici

actually argue the statute is unconstitutional. If the Court has constitutional doubt, it should interpret the statute as written and reserve the constitutional question for a case where it is properly preserved.

CONCLUSION

The judgment below should be reversed and remanded.

Respectfully submitted,

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September 11, 2017

RECORD AND BRIEFS.

No. 16-460

IN THE

Supreme Court of the United States

STEPHANIE C. ARTIS,

Petitioner,

v.

DISTRICT OF COLUMBIA,

Respondent.

ON WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

BRIEF OF THE NATIONAL CONFERENCE OF STATE LEGISLATURES, COUNCIL OF STATE GOVERNMENTS, NATIONAL ASSOCIATION OF COUNTIES, NATIONAL LEAGUE OF CITIES, U.S. CONFERENCE OF MAYORS, INTERNATIONAL CITY/COUNTY MANAGEMENT ASSOCIATION, AND INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT

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INTEREST OF *AMICI CURIAE*[1]

Amici are organizations that represent the interests of state and local governments.

The interests of *amici* in this proceeding are twofold. *First*, they represent state governments that pass the statutes of limitations that will be preempted by Petitioner's interpretation of 28 U.S.C. § 1367(d). States have a fundamental interest in enforcing their laws—and, as a result, the statutes of limitations that apply to state claims are matters of significant and historically-grounded interest to states. *Second*, *amici* organizations represent local governments who are defendants in the lawsuits subject to the statutes of limitations at issue in this proceeding. Those governments incur greater costs and burdens when statutes of limitations periods are functionally extended.

Amici organizations are:

The National Conference of State Legislatures ("NCSL") is a bipartisan organization that serves the legislators and staffs of the nation's 50 states, its commonwealths, and its territories. NCSL provides research, technical assistance, and opportunities for policymakers to exchange ideas on the most pressing state issues. NCSL advocates for the interests of state governments before Congress and federal agencies and regularly submits *amicus* briefs to this

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[1] Pursuant to Supreme Court Rule 37.6, counsel for *amici* represent that they authored this brief in its entirety and that none of the parties or their counsel, nor any other person or entity other than *amici* or its counsel, made a monetary contribution intended to fund the preparation or submission of this brief. Petitioner and Respondent have consented to the filing of this brief. Letters reflecting such consent have been filed with the Clerk.

Court in cases, like this one, that raise issues of vital state concern.

The Council of State Governments ("CSG") is the nation's only organization serving all three branches of state government. CSG is a region-based forum that fosters the exchange of insights and ideas to help state officials shape public policy. This offers unparalleled regional, national, and international opportunities to network, develop leaders, collaborate, and create problem-solving partnerships.

The National Association of Counties ("NACo") is the only national organization that represents county governments in the United States. Founded in 1935, NACo provides essential services to the nation's 3,069 counties through advocacy, education, and research.

The National League of Cities ("NLC") is dedicated to helping city leaders build better communities. NLC is a resource and advocate for 19,000 cities, towns, and villages, representing more than 218 million Americans.

The U.S. Conference of Mayors ("USCM"), founded in 1932, is the official nonpartisan organization of all United States cities with a population of more than 30,000 people, which includes over 1,400 cities at present. Each city is represented in USCM by its chief elected official, the mayor.

The International City/County Management Association ("ICMA") is a non-profit professional and educational organization consisting of more than 11,000 appointed chief executives and assistants serving cities, counties, towns, and regional entities. ICMA's mission is to create excellence in local governance by advocating and developing the profes-

sional management of local governments throughout the world.

The International Municipal Lawyers Association ("IMLA") has been an advocate and resource for local government attorneys since 1935. Owned solely by its more than 2,500 members, IMLA serves as an international clearinghouse for legal information and cooperation on municipal legal matters. IMLA's mission is to advance the responsible development of municipal law through education and advocacy by providing the collective viewpoint of local governments around the country on legal issues before the Supreme Court of the United States, the United States Courts of Appeals, and state supreme and appellate courts.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

This case concerns the proper interpretation of 28 U.S.C. § 1367(d), a provision of the Judicial Improvement Act of 1990. Section 1367(d) provides that:

> The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.

Petitioner and Respondent agree that Section 1367(d) prevents the loss of state-law claims to stat-

utes of limitations when a federal court declines to exercise supplemental jurisdiction over those state-law claims. They disagree, however, on how Section 1367(d) accomplishes this purpose.

For the reasons explained in Respondent's brief and herein, Section 1367(d) prevents the loss of dismissed state-law claims to statutes of limitations by providing the litigant with 30 days to re-file them in state court. This comports with the text of the statute, Congressional intent, and this Court's jurisprudence. The Court should thus adopt this interpretation and affirm the judgment of the District of Columbia Court of Appeals.

Amici submit this brief to underscore two points. *First*, Petitioner's interpretation is not simply incorrect; the burdens it creates are of real practical consequence. By stopping the clock on the state statute of limitations period while the federal court case is pending and restarting it 30 days after dismissal, Petitioner implements in state courts a federal tolling scheme that burdens already overstretched public entities. Local governments are regularly defendants in cases where plaintiffs bring both federal and state-law claims, and are subject to the tolling period provided for in Section 1367(d). *Jinks v. Richland Cty.*, 538 U.S. 456, 466 (2003) (citing *Raygor v. Regents of Univ. of Minn.*, 534 U.S. 533 (2002)), remanded to 585 S.E.2d 281 (S.C. 2003). The longer local governments remain subject to suit, and the more that period of time varies case-by-case, the greater the costs and burdens on resource constrained local governments. Many local governments lack in-house counsel to handle protracted lawsuits. Even those that have in-house counsel must bear the increased cost of litigating old, potentially stale claims: costs associated with record retention and

the turnover of counsel, witnesses, and others with familiarity of the case. As a result, older cases are disproportionately expensive to litigate and impose steep opportunity costs on local governments that, as a result, cannot therefore devote their time to newer, less-stale cases.

Second, Petitioner's interpretation unnecessarily intrudes on and supplants both state statutes of limitations and state-law tolling periods. As this Court has recognized, state statutes of limitations schemes reflect careful balancing of competing policy concerns that are the province of state legislatures. But Petitioner's interpretation would extend those periods, potentially for years, distorting local preferences, values, and compromises. Moreover, most states already have state law tolling provisions that, consistent with centuries of practice, provide plaintiffs with longer than 30 days to re-file state-law claims in state court if a federal court declines to exercise supplemental jurisdiction over them. Petitioner's interpretation of Section 1367(d) would—contrary to the statute's express recognition of these "longer tolling period[s]"—displace these tolling statutes as well.

Ultimately, while Congress may displace state-law where it makes its intentions clear, an intent to do so in the manner argued by Petitioner—the touchstone of this Court's preemption jurisprudence—is nowhere present here. Congress's narrow purpose in enacting Section 1367(d) was to prevent the loss of state-law claims to statutes of limitations during the pendency of federal court proceedings, and to assure that disappointed federal litigants always have at least 30 days to re-file any state-law claims that the federal court declines to hear. This purpose, which Petitioner does not dispute, is critical

to the proper interpretation of Section 1367(d). Respondent's interpretation would preempt state law only when necessary to achieve this specific purpose, whereas Petitioner's interpretation would preempt state law in far broader circumstances and to a far greater extent. Nothing in the text or legislative history indicates any intention of Congress to implement that broader preemption.

When faced with a preemption clause that is susceptible to more than one plausible interpretation, this Court applies a presumption against preemption to support the narrower interpretation. Application of that principle is particularly appropriate here, where Petitioner's interpretation is qualitatively different from Respondent's and would alter *all* state statutes of limitations, not just those that would have expired during the pendency of federal proceedings. Likewise, it would displace even generous state-law tolling provisions. Thus, even if Section 1367(d) were susceptible to Petitioner's reading, the presumption against preemption requires its rejection.

The judgment of the District of Columbia Court of Appeals should be affirmed.

ARGUMENT

I. PETITIONER'S INTERPRETATION WOULD IMPOSE SIGNIFICANT BURDENS ON LOCAL GOVERNMENTS.

A. Petitioner's reading of Section 1367(d) could result in lengthy extensions of state statutes of limitations.

Petitioner's approach could result in unreasonably lengthy delays between the federal court's decision to decline to exercise supplemental jurisdiction and the time that the plaintiff must re-file in

state court. This is particularly true when the plaintiff files her state-law claims in federal court well before the end of the state-law limitations period, and where the federal court proceedings are lengthy.

In some situations, as in the instant case, this is almost guaranteed to occur—for instance, federal Title VII actions must be brought within 90 days after the Equal Opportunity Employment Commission issues a "right to sue" letter, 42 U.S.C. § 2000e-5(f)(1), at which time there will typically be significant time remaining on the limitations period for any related state-law claims.

It is almost certain to happen in other situations as well. For example, for a state-law claim with a statute of limitations of five years, some plaintiffs will bring their federal and state claims to federal court within two years. If the federal court takes three years to dispose of the case—by no means an unusual amount of time—under Respondent's interpretation, the statute of limitations for the state-law claims will have been extended to a full eight years plus 30 days: the two years the plaintiff originally took to file, the three years the case was pending in district court, plus the remaining three years on the original statute of limitations and the 30 days provided for by Section 1367(d).

These significant extensions would occur under Petitioner's interpretation even in situations in which the plaintiff was nowhere near losing her ability to re-file her claim in state court. Again consider a situation involving a state claim with a statute of limitations of five years and a plaintiff who brings this claim, along with a federal-law claim, two years after the cause of action accrues. But in this instance, the federal court dismisses the federal claim and declines to exercise supplemental jurisdiction

over the state-law claim after just one year. Petitioner's interpretation would add an additional year (plus 30 days) to the two years still remaining on the state statute of limitations—an entirely unnecessary delay and displacement of state law.

B. These delays will burden local governments.

Although Section 1367(d) does not apply to claims filed in federal court against nonconsenting states that are dismissed on Eleventh Amendment grounds, local governments are afforded no such protection. *Jinks*, 538 U.S. at 466. As a result, the outcome of this litigation will influence the operations of local governments across the country.

1. Local governments are frequent defendants in lawsuits containing both state and federal claims. First, local governments, which employ nearly 10% of nonfarm workers,[2] are often sued under both federal and state law in their capacity as employers.[3] Second, since 42 U.S.C. § 1983 creates a separate federal cause of action against state and local governments

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[2] U.S. Bureau of Labor Statistics, *Current Employment Statistics—CES (National)*, http://www.bls.gov/ces/ (follow "CES Tables and Charts" hyperlink; scroll down to "Tables from Employment and Earnings" section; view tbl.B-1a) (last visited Aug. 10, 2017).

[3] *See, e.g.*, *Nowak v. St. Rita High Sch.*, 757 N.E.2d 471 (Ill. 2001); *Thomas v. Cty. of Camden*, 902 A.2d 327 (N.J. Super. Ct. App. Div. 2006); *Balik v. City of Bayonne*, No. A-1448-13, 2016 WL 3351942 (N.J. Super. Ct. App. Div. June 17, 2016); *Jackson v. City of Cleveland*, No. E2015-01279-COA-R3-CV, 2016 WL 4443535 (Tenn. Ct. App. Aug. 22, 2016); *Peacock v. Cty. of Orange*, No. G040617, 2009 WL 3184564 (Cal. Ct. App. Oct. 6, 2009).

acting pursuant to state law,[4] local governments are regularly sued under that statute and state law concurrently[5]—a burden that is unique to governmental entities. In fact, nearly one-third of cases citing Section 1367(d) involve suits against state or local governments—or 521 out of 1,659 total cases.[6]

2. These suits impose palpable burdens on resource-strapped local governments. As an initial matter, many local governments do not have in-house counsel to handle law suits that are protracted over a long period of time. According to data from the 2012 Census of Governments, over 60% of municipalities have no full-time employees serving legal functions; and fewer than 25% have more than one such employee.[7] Even local governments that have in-

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[4] *See Monell v. Dep't of Soc. Servs. of N.Y.*, 436 U.S. 658 (1978) (holding that municipalities are included within the term "person" to which 42 U.S.C. § 1983 applies).

[5] *See, e.g., Salazar v. City of Okla. City*, 976 P.2d 1056 (Okla. 1999); *Jinks v. Richland Cty.*, 538 U.S. 456, remanded to 585 S.E.2d 281 (S.C. 2003); *Williams v. City of Jacksonville Police Dep't*, 599 S.E.2d 422 (N.C. Ct. App. 2004); *Okoro v. City of Oakland*, 48 Cal. Rptr. 3d 260 (Cal. Ct. App. 2006); *Gooden v. City of Talledega*, 966 So. 2d 232 (Ala. 2007); *Est. of Belden v. Brown Cty.*, 261 P.3d 943 (Kan. Ct. App. 2011); *Willis v. Shelby Cty.*, No. W2008-01487-COA-R3-CV, W2008-01558-COA-R3-CV, 2009 WL 1579248 (Tenn. Ct. App. June 8, 2009); *Tallmann v. City of Elizabethtown*, No. 2006-CA-002542-MR, 2007 WL 3227599 (Ky. Ct. App. Nov. 2, 2007).

[6] As of June 14, 2017, using a report generated by LexisNexis.

[7] U.S. Census Bureau, *2012 Census of Governments: Employment*,
https://www.census.gov/govs/apes/historical_data_2012.html
(follow "All Downloadable Data" hyperlink; then access "Individual Unit File" directory for the data files; data on the number of Judicial and Legal employees (Data Function Code 025) of municipalities (Summary Total Code 2) are contained in file 12cempst.dat) (last visited July 24, 2017).

house counsel must deal with turnover—of counsel, of witnesses, and of those who have institutional knowledge of the facts underlying the suit—when there are long delays in re-filing state-law claims in state court.

Record retention policies, which are keyed to state law and already account for state-law limitations and tolling periods, would also require revision. Petitioner's interpretation of Section 1367(d) would require these policies to take into account suits that could reappear from many years previous.[8] Long delays between dismissal from federal court and re-filing in state court may also increase the cost to public entities of obtaining insurance.

The burdens associated with such delays translate into more public money spent on litigation. As one district court has explained:

> A statute of limitations naturally results in decreased expenditures both because it reduces the number of claims brought, by weeding out those that are time-barred, and because it lessens the fiscal burden of maintaining administrative records indefinitely.

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[8] As explained in more detail below, under Petitioner's interpretation of Section 1367(d), the amount of time for a plaintiff to re-file in state court will vary case-by-case. Under Respondent's interpretation, however, the time period (assuming that the state law statute of limitations otherwise would have expired while the claim was pending in federal court) will either be 30 days or the longer period provided by state law, which is nearly always a fixed length of time after dismissal by the federal court.

Withey v. Perales, 752 F. Supp. 569, 572 (W.D.N.Y. 1990), aff'd, 950 F.2d 156 (2d Cir. 1990). Local governments, which are resource-constrained and tax-revenue dependent, are inherently disadvantaged by extensions of state statute of limitations periods. And there is an opportunity cost to forcing local governments to litigate stale claims, as it leaves them with fewer resources to devote to more timely suits.

In short, Petitioner's reading of Section 1367(d) is not bloodless—it imposes real costs on defendants, particularly governmental defendants that already suffer from resource limitations. As discussed below, it also frustrates state policies that, in some cases, are meant specifically to mitigate the costs that long and uncertain limitations periods impose on local governments.

II. PETITIONER'S INTERPRETATION FRUSTRATES STATE POLICY CHOICES.

This Court has long recognized that whenever states craft statutes of limitations and related tolling provisions, they balance a range of fundamental and competing interests, from enabling plaintiffs to bring meritorious claims to protecting both defendants and courts from the burdens of litigating stale claims.

By extending the state statute of limitations period by the time the case was pending in federal court plus 30 days, and supplanting state-law tolling provisions, Petitioner's interpretation of Section 1367(d) intrudes unnecessarily on states' balancing of these interests and, ultimately, would do so unnecessarily. Respondent's interpretation, on the other hand, affects state policies only as necessary to allow plaintiffs to re-file in state court and only where the state itself has not "provide[d] for a longer tolling period."

A. States make considered policy choices when enacting statutes of limitations.

When states pass statutes of limitations, they engage in a calculated and deliberative balancing act, one that often varies considerably depending on the specific situation state lawmakers are examining. As a general matter, and as this Court has stated:

> Statutes of limitation are vital to the welfare of society and are favored in the law. They are found and approved in all systems of enlightened jurisprudence. They promote repose by giving security and stability to human affairs. An important public policy lies at their foundation. They stimulate to activity and punish negligence. While time is constantly destroying the evidence of rights, they supply its place by a presumption which renders proof unnecessary.

Wood v. Carpenter, 101 U.S. 135, 139 (1879).

Statutes of limitations are meant "to prevent potential plaintiffs from neglecting suits, and to suppress stale and fraudulent claims after the facts concerning them have become obscured by a lapse of time and memory." *Allen v. Greyhound Lines Inc.*, 656 F.2d 418, 422 (9th Cir. 1981). *See also Pashley v. Pac. Elec. Ry. Co.*, 153 P.2d 325, 326 (Cal. 1944) (explaining the "legislative policy in prescribing a period of limitation for the commencement of actions" and that "'[t]he underlying purpose of statutes of limitation is to prevent the unexpected enforcement of

stale claims concerning which persons interested have been thrown off their guard by want of prosecution.'") (quoting 1 Horace Gay Wood *et al.*, *A Treatise on the Limitation of Actions at Law and in Equity* at 8-9 (4th ed. 1916)). However, policymakers also recognize countervailing concerns, such as the preference for adjudicating matters on their merits and the desire not to dismiss valid claims.

Accordingly, this Court has acknowledged that "the length of the period allowed for instituting suit inevitably reflects a value judgment concerning the point at which the interests in favor of protecting valid claims are outweighed by the interests in prohibiting the prosecution of stale ones." *Johnson v. Ry. Express Agency, Inc.*, 421 U.S. 454, 463–64 (1975). Statutes of limitations thus "represent a public policy about the privilege to litigate." *Chase Sec. Corp. v. Donaldson*, 325 U.S. 304, 314 (1945), reh'g denied, 325 U.S. 892 (1945). For state-law claims, state legislatures are responsible for making these value judgments and policy decisions.

Given the complex and often competing considerations behind statutes of limitations, it is not surprising that states have implemented specific and varied provisions that reflect different policy preferences and local contexts. Within a state, the statutes of limitations for different causes of action range considerably. For example, New York provides a 20-year statute of limitations to enforce any temporary order, permanent order, or judgment which awards support, alimony, or maintenance, compared with one year for an action upon an arbitration award. N.Y. C.P.L.R. §§ 211(e), 215(5). While New York provides four years for an action on a residential rent overcharge, it has a one-year statute of limitations for an action by a tenant against a landlord

for unlawful retaliation. N.Y. C.P.L.R. §§ 213-a, 215(7).

Statutes of limitations for similar causes of action vary widely among the states. For example, Tennessee provides a six-month statute of limitations for slander and one year for libel, whereas Vermont provides three years for each of these causes of action. Tenn. Code. Ann. §§ 28-3-103, 28-3-104(a)(1)(A); Vt. Stat Ann. tit. 12, § 512(3). South Carolina provides a three-year statute of limitations for an action upon a contract, express or implied, whereas Wyoming provides ten years for a contract in writing and eight years for a contract not in writing, either express or implied. S.C. Code Ann. § 15-3-530; Wyo. Stat. Ann. § 1-3-105(a).

Each statute of limitations represents a deliberate policy choice, and state legislatures frequently revise these statutes to respond to new information and changes in policy preferences. For example, New York created a statute of limitations for certain forms of professional malpractice that is shorter than the one for ordinary personal injury, which New York's highest court described as part of a response "to a crisis in the medical profession posed by the withdrawal and threatened withdrawal of insurance companies from the malpractice insurance market." *Bazakos v. Lewis*, 991 N.E.2d 847, 849 (N.Y. 2009) (quoting *Bleiler v. Bodnar*, 479 N.E.2d 230, 232 (N.Y. 1985)). The legislature was specific: the purpose of the legislation was to enable "health care providers to get malpractice insurance at reasonable rates." *Id.* at 635 (quoting Mem. of State Exec. Dep't, 1975 N.Y. Sess. Laws 1601, 1601–02.

State legislatures have also used statutes of limitations to promote certainty for potential defend-

ants. For instance, California has adopted a 90-day statute of limitations to challenge certain zoning decisions. The California Supreme Court, quoting the statute, summarized its purpose as follows: "'to provide certainty for property owners and local governments regarding decisions made pursuant to this division' . . . and thus to alleviate the 'chilling effect on the confidence with which property owners and local governments can proceed with projects' . . . created by potential legal challenges to local planning and zoning decisions." *Travis v. Cty. of Santa Cruz*, 94 P.2d 538, 541 (Cal. 2004) (internal citation omitted), remanded to 2004 WL 2801083 (Cal. Ct. App. Dec. 6, 2004), appealed after remand, 2007 WL 294132 (Cal. Ct. App. Feb. 2, 2007).

In other instances, states have lengthened statutes of limitations in an effort to ensure that plaintiffs have an opportunity to have their claims heard on the merits. For example, New York recently added Section 214-f to its Civil Practice Law and Rules, which allows plaintiffs to sue for personal injury caused by contact with substances in a Superfund site either (1) within the time period already provided for in Section 214-c or (2) within three years of the designation of an area as a Superfund site, whichever is later. N.Y. C.P.L.R. § 214-f. The bill's legislative history explained that it was prompted by "[t]he recent discovery of water contamination in Hoosick Falls, New York and Flint, Michigan" and the desire to address the possibility that "the statute of limitations to bring a personal injury action has long since run before any contamination was ever discovered."[9] Similarly, California has created grace

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[9] Memorandum from the N.Y. State Assembly in Support of Bill No. A09568A (2016),

period provisions that apply to civil actions brought by Holocaust victims,[10] braceros,[11] and victims of the terrorist attacks of September 11, 2001,[12] among others, in order to address the particular issues facing these groups regarding statutes of limitations.

Lastly, in crafting their systems of statutes of limitations, states give particular consideration to the burden that long limitations periods can impose on state and local governments. Numerous states have adopted statutes of limitations that apply specifically to state and local governments and provide for a shorter time period to bring suits against those entities.[13] Other states protect themselves with a no-

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http://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A09568&term=2015&Summary=Y&Actions=Y&Memo=Y&Text=Y.

[10] Cal. Civ. Proc. Code § 354.5

[11] Cal. Civ. Proc. Code § 354.7.

[12] Cal. Civ. Proc. Code § 340.10.

[13] Ariz. Rev. Stat. § 12-821 ("[a]ll actions against any public entity or public employee shall be brought within one year after the cause of action accrues and not afterward"); Fla. Stat. Ann. § 768.28(6)(a) ("[a]n action may not be instituted on a claim against the state . . . unless the claimant presents the claim in writing . . . within 3 years after such claim accrues"); Me. Rev. Stat. Ann. tit. 14, § 8110 ("[e]very claim against a governmental entity or its employees permitted under this chapter is forever barred . . . unless an action . . . is begun within 2 years after the cause of action accrues"); Neb. Rev. Stat. Ann. § 25-218 ("[e]very claim . . . against the state shall be forever barred unless action is brought thereon within two years after the claim arose"); N.H. Rev. Stat. Ann. § 507-B:7 ("[n]o actions shall be maintained against the governmental unit under this chapter unless the same is commenced within 3 years after the time of injury or damage"); 9 R.I. Gen. Laws § 9-1-25 ("action shall be instituted within three (3) years from the effective date of the special act or within three (3) years of the accrual of any claim of tort"); S.D. Codified Laws § 21-32-2 ("[a]ction on any claim on contract or tort against the state shall be commenced within

tice requirement, by which the would-be plaintiff must supply notice to the state governmental entity within a specified period of time, usually less than a year.[14]

These are just a few examples of the ways in which state legislatures specifically craft statutes of limitations to address constantly evolving policy concerns and value judgments. The variation in statutes of limitations among states and over time demonstrates both the complexity of the states' analyses and the benefit of a federalist system. *Cf. New State*

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one year after same has arisen"); Utah Code Ann. § 78B-2-304 ("[a]n action may be brought within two years . . . in causes of action against the state and its employees, for injury to the personal rights of another if not otherwise provided by state or federal law."); Wyo. Stat. Ann. § 1-39-114 ("actions against a governmental entity . . . shall be forever barred unless commenced within one (1) year after the date the claim is filed . . . . ").

In addition, the courts of at least two states have ruled that certain statute of limitations tolling provisions only apply to claims against state and local governments if the relevant state law includes an express statement to that effect. *Craig v. Provo City*, 389 P.3d 423, 426 (Utah 2016) (holding that Utah's Governmental Immunity Act "speaks comprehensively on the procedure and requisite timing of a claim filed against the government, in a manner foreclosing the applicability of the Savings Statute"); *Sneed v. City of Red Bank*, 459 S.W.3d 17, 28 (Tenn. 2014) (noting the long line of Tennessee decisions holding that "general saving statutes do not apply to suits against the State or other governmental entities unless the statute waiving sovereign immunity expressly permits their application.").

[14] D.C. Code § 12-309 (notice requirement of six months); Ind. Code Ann. § 34-13-3-6 (notice requirement of 270 days). While these notice requirements inform potential defendants of the possible initiation of a lawsuit, they do not inform them of how long the plaintiff may take to re-file claims in state court if those were to be dismissed from federal court.

Ice Co. v. Liebmann, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting) ("It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country."). These myriad state policy decisions should not be overturned lightly and not unless preempted explicitly by Congress.

B. States have considered—and responded to—the problem Section 1367(d) is intended to address.

1. State legislatures have long confronted the statutes-of-limitations problem that Section 1367(d) was intended to address. Congress recognized as much when it expressly instructed that a claim's period of limitations shall be tolled "while the claim is pending and for a period of 30 days after it is dismissed *unless State law provides for a longer tolling period*" (emphasis added). And, in fact, a majority of states—32 in total—*do* provide for a designated period of time to re-file in state court that is "longer" than 30 days,[15] reinforcing that Section 1367(d) was intended merely to provide a grace period to re-file for those several states that did not provide for such "tolling period[s]." Indeed, these state law tolling statutes, by and large, precede Section 1367(d); Congress was thus presumably well aware of them when it enacted Section 1367(d). *See Cannon v. Univ. of Chi.*, 441 U.S. 677, 696–98 (1979) (explaining that "[i]t is always appropriate to assume that our elected representatives, like other citizens, know the law,"

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[15] Attached to this Brief is an Appendix listing the various state law tolling statutes in each of the 50 states and the District of Columbia.

and that this is particularly true when Congress references certain laws), remanded to 605 F.2d 560 (7th Cir. 1979), appealed after remand, 648 F.2d 1104 (7th Cir. 1981), mandamus denied, 454 U.S. 811 (1981), cert. denied, 454 U.S. 1128 (1981), cert. denied, 460 U.S. 1013 (1983).

State law tolling statutes are essential elements of states' systems of limitations. As this Court has explained:

> Any period of limitation . . . is understood fully only in the context of the various circumstances that suspend it from running against a particular cause of action . . . [i]n virtually all statutes of limitations the chronological length of the limitation period is interrelated with provisions regarding tolling, revival, and questions of applicability.

Johnson, 421 U.S. at 463–64 (1975). The details of states' tolling provisions, such as their lengths and the circumstances in which they apply, again reflect the considered policy choices of the states.

Consistent with centuries of practice, state law tolling statutes nearly always "giv[e] to a plaintiff whose timely action is dismissed for procedural reasons such as improper venue a specified time in which to bring a second action." *Burnett v. N.Y. Cent. R.R. Co.*, 380 U.S. 424, 432 (1965). *See Gaines v. City of New York*, 109 N.E. 594, 595 (N.Y. 1915) (explaining that New York's tolling statute "has its roots in the distant past," specifically the English Limitations Act of 1623 (21 Jac. 1, c. 16, § 4)). As of 1965, this Court noted that 31 states had such statutes, *Bur-*

nett, 380 U.S. at 431–32 n.9,[16] and since that time several states that previously did not have relevant tolling statutes have enacted them.[17] Indeed, courts in the dozen states that do not have such state law tolling statutes—including, as relevant to this particular case, the District of Columbia[18]—acknowledge that they are in the minority.[19]

Both historically and currently, the principal way in which states have enabled plaintiffs to re-file claims in certain circumstances has been to provide plaintiffs with a set amount of time to re-file, rather than through suspending the statute of limitations. Nearly all—33 of 39—of state law tolling statutes provide that a second action may be brought during a fixed amount of time after the initial case is dis-

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[16] Although the Court in *Burnett* was focused on dismissals for improper venue, the statutes it cited generally address dismissals for a variety of reasons, including for lack of subject-matter jurisdiction.

[17] *See, e.g.*, Neb. Rev. Stat. Ann. § 25-201.01 (enacted by 2000 Neb. Laws, LB 55, § 1); Nev. Rev. Stat. Ann. § 11.500 (enacted by ch. 376, § 1, 2003 Nev. Stat. 2134; amended by ch. 89, § 1, 2005 Nev. Stat. 247); *Rader v. Greenberg Traurig, LLP*, 352 P.3d 465, 469 (Ariz. Ct. App. 2015) ("the Legislature enacted a general civil savings statute in 1986, currently codified at A.R.S. § 12-504.").

[18] The District of Columbia is included in the term "State" as used in Section 1367. 28 U.S.C. § 1367(e).

[19] *See, e.g.*, *East v. Graphic Arts Indus. Tr.*, 718 A.2d 153, 156 (D.C. 1998), answer conformed to 172 F.3d 919 (D.C. Cir. 1998) answer conformed to 172 F.3d 919 (D.C. Cir. 1998); *Eto v. Muranaka*, 57 P.3d 413, 427 (Haw. 2002); *HCA Health Servs. of Fla., Inc. v. Hillman*, 906 So. 2d 1094, 1098 (Fla. Dist. Ct. App. 2004), review denied, 904 So. 2d 430 (Fla. 2005).

missed.[20] The tolling periods provided by these statutes vary from as little as 30 days to as much as three years, but most states provide six months or one year.[21] As with statutes of limitations themselves, these differences reflect considered policy decisions by states. Longer tolling periods provide plaintiffs with more access to state courts, while short tolling periods better guard against the problems and costs associated with litigating stale claims. In addition, states have recognized the fact that these tolling statutes can increase the workloads, and thus costs, of government offices.[22] And just as with statutes of limitations in general, states periodically revise their tolling statutes to reflect updated policy preferences.[23]

Despite the variations among states' tolling statutes, they almost always cover the same situations addressed by 28 U.S.C. § 1367(d). Some states have a tolling statute that specifically addresses

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[20] A small minority of states take a different approach, such as not computing as part of the limitations period the time the claim was pending in the first case. *See* Appendix.

[21] *See* Appendix.

[22] *See* Howard Kensinger, *Fiscal note: Legislative Fiscal Analyst Estimate* (Jan. 7, 2000),

http://www.nebraskalegislature.gov/FloorDocs/96/PDF/FN/LB55.pdf (noting that the Nebraska "Attorney General advises this bill [establishing a state law tolling statute] would increase the workload in the Attorney General's Office. Cases that are currently dismissed could be re-filed even if the statute of limitations had passed.").

[23] For example, Oregon previously provided for a one-year saving period, but now provides for 180 days. Or. Rev. Stat. § 12.220 (as amended by 2003 Or. Laws ch. 296). Indiana previously provided a five-year state law tolling statute; currently it provides for three years. *Compare Burnett*, 380 U.S. at 431 n.9 *with* Ind. Code § 34-11-8-1.

state-law claims that are dismissed by a federal court and re-filed in state court. *See, e.g.*, Colo. Rev. Stat. § 13-80-111(2) ("[t]his section shall be applicable to all actions which are first commenced in a federal court as well as those first commenced in the courts of Colorado or of any other state"); Conn. Gen. Stat. Ann. § 52-592(d) (providing that this section shall apply "to any action brought to the United States circuit or district court for the district of Connecticut which has been dismissed without trial upon its merits or because of lack of jurisdiction in such court"); Ky. Rev. Stat. Ann. § 413.270(2) (defining "court," as used in Kentucky's tolling statute, to include "all courts . . . of the Commonwealth of Kentucky or of the United States of America."). Other states' statutes apply generally to claims that fail otherwise than upon the merits, which numerous courts have interpreted as applying to state-law claims dismissed by a federal court declining to exercise jurisdiction over them after dismissing related federal claims. *See, e.g.*, *Grider v. USX Corp.*, 847 P.2d 779, 788 n.7 (Okla. 1993) (explaining that although Oklahoma's saving statue applies when a federal court declines to exercise supplemental jurisdiction, it is "available *only* to those pendent claims that had *become barred during an action's pendency*"); *Liberace v. Conway*, 574 N.E.2d 1010, 1012 (Mass. App. Ct. 1991) (holding that Massachusetts' tolling statute "is applicable to pendent claims dismissed in a Federal court"), review denied, 411 Mass. 1102 (Mass. 1991); *Osborne v. AK Steel/Armco Steel Co.*, 775 N.E.2d 483 (Ohio 2002) (holding that the Ohio tolling statute applied to a state age-discrimination claim brought in state court after a federal court dismissed it after granting summary judgment for the defendant on the federal-law claims); *Vale v.*

Ryan, 809 S.W.2d 324 (Tex. App. 1991) (applying Texas's current tolling statute where a federal court refused to exercise jurisdiction over a pendent state claim); *Burford v. Sun Oil Co.*, 186 S.W.2d 306, 315 (Tex. Civ. App. 1944) (applying a prior version of Texas's tolling statute where "[t]he appellees brought their suit in the Federal court. It was dismissed because the State courts were the proper courts or courts of proper jurisdiction in which to bring suit."). As a general matter, state law tolling statutes are applicable to claims that began in federal court.[24]

2. The final clause of Section 1367(d)—"unless State law provides for a longer tolling period"—expressly recognizes these state-law "tolling period[s]," emphasizing that the modest purpose of the federal provision is to ensure that plaintiffs can bring related state-law claims to federal courts under Section 1367(a) without fear that statutes of limitations would bar them from re-filing those claims in state court. The plain language of Section 1367(d) demonstrates that at the time Section 1367(d) was enacted, Congress recognized that many states already provided for tolling periods longer than the one set forth in Section 1367(d). In those cases, Congress intended for the state tolling periods to apply.

Petitioner's interpretation, however, has precisely the opposite effect. It would result in federal law supplanting state tolling statutes, despite the fact that the text of Section 1367(d) demonstrates Congress's intention to respect these state statutes. Under Petitioner's approach, state tolling statutes

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[24] *Cf. e.g.*, 42 Pa. Stat. and Cons. Stat. Ann. § 5103(b) (providing a specific procedural mechanism for federal court dismissals); *Ferrari v. Antonacci*, 689 A.2d 320, 322–23 (Pa. Super. Ct. 1997), appeal denied, 548 Pa. 670 (Pa. 1997).

would not apply whenever the amount of time remaining on the state statute of limitations when a plaintiff files in federal court, plus 30 days, is longer than the amount of time provided in the state tolling statute. Even the most generous state tolling statute could thus be supplanted by a federal tolling period in certain circumstances. For example, in this very case, Petitioner's view that she is entitled to nearly two years to re-file her claims would supplant 32 state-law tolling statutes. This outcome is contrary to the language of Section 1367(d) calling for the use of state tolling periods. Such an interpretation of Section 1367(d) is not grounded in either the text or legislative history of the statute, and, as discussed below, it serves no recognized federal purpose.

III. RESPONDENT'S INTERPRETATION BEST BALANCES FEDERALISM CONCERNS.

A. Respondent's interpretation fulfills Congress's purpose in enacting Section 1367(d).

As the Court has often explained, "'[t]he purpose of Congress is the ultimate touchstone' in every pre-emption case." *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996) (quoting *Retail Clerks v. Schermerhorn*, 375 U.S. 96, 103 (1963)). Petitioner acknowledges that "the purpose of the [Section 1367(d)] tolling rule is 'to prevent the loss of claims to statutes of limitations where state law might fail to toll the running of the period of limitations while a supplemental claim was pending in federal court.'" Pet. Br. at 6–7 (quoting H.R. Rep. No. 101-734, at 30 (1990), *reprinted in* 1990 U.S.C.C.A.N. 6860, 6874). And indeed, the legislative history of Section 1367(d) underscores that "[t]he purpose is to prevent the loss of claims to statutes of limitations where state law

might fail to toll the running of the period of limitations while a supplemental claim was pending in federal court." H.R. Rep. No. 101-734, at 30, 1990 U.S.C.C.A.N. at 6874. In *Jinks*, the Court identified two ways in which eliminating the possibility of the statute of limitations on supplemental claims becoming time barred while pending in federal court was "conducive to the administration of justice in federal court." *Id.* at 463 (internal quotations omitted). *First*, it eliminated the unsatisfactory and inefficient options available to federal judges in the pre-Section 1367(d) world. That is, unless a defendant agreed to waive any statute of limitations defenses, federal judges might "retain jurisdiction over the state-law claim even though it would more appropriately be heard in state court" or "dismiss the state-law claim but allow the plaintiff to reopen the federal case if the state court later held the claim to be time barred." *Id.* at 463.

Second, prior to Section 1367(d)'s enactment, plaintiffs too faced unattractive options at the outset of their litigation in those states without an applicable tolling statute. Plaintiffs who brought both state- and federal-law claims together in federal court risked that the statute of limitations on the state-law claim would expire while the case was pending in federal court; if the federal court dismissed the federal-law claim and declined to exercise jurisdiction over the state-law claim, the plaintiffs would be unable to then bring the state-law claim in state court. Alternatively, plaintiffs could "file a single state-law action, which would abandon their right to a federal forum." *Id.* There was only one way for plaintiffs to ensure that both their state- and federal-law claims could be decided on the merits. They would have to bring separate actions in federal and state courts,

and bear increased litigation expenses. In states without their own tolling statutes, this pre-Section 1367(d) system acted as "a serious impediment to access to the federal courts on the part of plaintiffs pursuing federal- and state-law claims that 'derive from a common nucleus of operative fact.'" *Id.* (quoting *Mine Workers v. Gibbs*, 383 U.S. 715, 725 (1966)). Section 1367(d) removed these problems facing federal judges and plaintiffs. This Court accordingly concluded that it fell within Congress's authority under the Necessary and Proper Clause.

Respondent's interpretation completely fulfills Congress's purpose in enacting Section 1367(d). It provides a "straightforward tolling rule" in place of the "inefficient" and "unsatisfactory" options open to federal judges and plaintiffs in the pre-Section 1367(d) era. *Jinks*, 538 U.S. at 463–64. The scope of the preemption under Respondent's interpretation is precisely aligned with Congress's intention to remove the possibility a time-bar could prevent the claim from being re-filed in state court; it provides a federal tolling period where state law does not already address this problem through provision of "a longer tolling period."

In contrast, Petitioner's approach would vastly expand the applicability of Section 1367(d) well beyond the specific intent of Congress and for no federal jurisdictional purpose. Under Petitioner's interpretation, Section 1367(d) would alter the relevant state statute of limitations in *all* instances, even if the state statute of limitations would not have expired while the state-law claim was pending in federal court.[25] In that scenario, the problem that con-

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[25] The Court of Appeals of Maryland has suggested that the use of the word "shall" in Section 1367(d) indicates that it must ap-

cerned Congress and which was described in *Jinks* simply is not implicated, rendering the federal intrusion gratuitous.

Nothing in the text, the legislative history, or the Court's analysis in *Jinks* indicates any intention of Congress to preempt state law absent the need to prevent the loss of claims. As a result, only Respondent's interpretation of Section 1367(d) is consistent with the intent of Congress.

B. The presumption against preemption favors Respondent's interpretation.

This Court has explained that "when the text of a pre-emption clause is susceptible of more than one plausible reading, courts ordinarily 'accept the reading that disfavors pre-emption.'" *Altria Grp., Inc. v. Good*, 555 U.S. 70, 77 (2008) (quoting *Bates v. Dow Agrosciences LLC*, 544 U.S. 431, 449 (2005)). Similarly, where there are multiple plausible interpretations of a preemption provision, the Court uses the presumption against preemption "to support a narrow interpretation" of that provision. *Medtronic*, 518 U.S. at 485. Congress must speak clearly whenever it "intends to pre-empt the historic powers of the States" or when it legislates in "'traditionally sensitive areas' that 'affec[t] the federal balance.'" *Raygor v. Regents of Univ. of Minn.*, 534 U.S. 533, 543 (2002) (quoting

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ply in every case. *Turner v. Kight*, 957 A.2d 984, 991 (Md. 2008), cert. denied, 556 U.S. 1181 (2009). However, as other courts have explained, "shall be tolled" can be understood as meaning "the statute could abate the *expiration* of any period of limitations for as long as a claim was pending in federal court plus 30 days after dismissal." *City of Los Angeles v. Cty. of Kern*, 328 P.3d 56, 60 (Cal. 2014) (citing *Kolani v. Gluska*, 64 Cal. App. 4th 402, 409–11, 75 Cal. Rptr. 2d 257, 261–62 (1998)) (emphasis added).

Will v. Mich. Dep't of State Police, 491 U.S. 58, 65 (1989)).

This is such a case—"Section 1367(d) is . . . a balance-altering statute [(*Raygor*, 534 U.S. at 544)]; it preempts state law, supplanting to some extent state statutes of limitations that would otherwise apply to affected claims." *City of Los Angeles*, 328 P.3d at 64. And this affects real state interests—"states long have established, and have a uniquely strong interest in, the limitations periods that apply to their own state law claims in their own state courts." *Id.* (citing *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 353 (1988)).

Respondent's interpretation of Section 1367(d) provides for the minimal interference with states' limitations rules. It establishes a federal tolling period for state-law claims that is straightforward and ensures that plaintiffs' state-law claims will not expire while pending in federal court. And it does not supersede state-law tolling statutes that already provide plaintiffs with an amount of time to re-file claims in state court that is greater than 30 days, nor does it supplant state statutes of limitations unless the statute of limitations would have expired within 30 days of dismissal from federal court.

Petitioner's approach, on the other hand, wreaks havoc on states' carefully crafted systems of statutes of limitations and tolling statutes. It has the potential to alter the statutes of limitations applicable to state-law claims in every state. Critically, this interpretation would result in the preemption of state statutes of limitations and state-law tolling statutes even when it is entirely unnecessary to ensure that plaintiffs are able to re-file their state-law claims in state court.

Moreover, under Petitioner's approach, the amount of time that Section 1367(d) provides to plaintiffs beyond what is provided for by state law would vary case-by-case within a state, depending on how much time was remaining on a plaintiff's state-law claim when it was filed in federal court. This is a much greater disruption to states' statutes of limitations and tolling statutes than Respondent's approach, which instead establishes a uniform 30-day minimum for only those states that do not provide for a longer time.

Finally, under Petitioner's interpretation of Section 1367(d), states would have limited legislative tools to avoid preemption and the potential for long delays in the re-filing of state-law claims dismissed by a federal court. The only way that a state could limit the possibility of time extensions that it considers contrary to the public interest would be to reduce the statute of limitations for all plaintiffs, including for those who initially bring the claim in state court. Thus, Petitioner's approach undermines the carefully balanced policy considerations states have made in enacting their statutes of limitations and state law tolling statutes.

Petitioner's approach constitutes sweeping interference with state-law limitations rules; Respondent's approach, on the other hand, is minimally invasive, while guaranteeing against the loss of state-law claims initially brought in federal court. If the Court does not conclude that Respondent's interpretation is required by the plain language of the statute, the Court should apply the presumption against preemption when interpreting Section 1367(d).

CONCLUSION

The judgment below should be affirmed.

Respectfully submitted,

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APPENDIX

APPENDIX
State Law Tolling Statutes

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Alaska—1 Year
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If an action is commenced within the time prescribed and is dismissed upon the trial or upon appeal after the time limited for bringing a new action, the plaintiff or, if the plaintiff dies and the cause of action in favor of the plaintiff survives, the heirs or representatives may commence a new action upon the cause of action within one year after the dismissal or reversal on appeal. All defenses available against the action, if brought within the time limited, are available against the action when brought under this provision.

Arizona—6 Months
Ariz. Rev. Stat. § 12-504(A)

If an action is commenced within the time limited for the action, and the action is terminated in any manner other than by abatement, voluntary dismissal, dismissal for lack of prosecution or a final judgment on the merits, the plaintiff, or a successor or personal representative, may commence a new action for the same cause after the expiration of the time so limited and within six months after such termination. If an action timely commenced is terminated by abatement, voluntary dismissal by order of the court or dismissal for lack of prosecution, the court in its discretion may provide a period for commencement of a new action for the same cause, although the time otherwise limited for commencement has expired. Such period shall not exceed six months from the date of termination.

Arkansas—1 Year
Ark. Code Ann. § 16-56-126(a)(1)

If any action is commenced within the time respectively prescribed in this act, in §§ 16-116-101 -- 16-116-107, in §§ 16-114-201 -- 16-114-209, or in any other act, and the plaintiff therein suffers a nonsuit, or after a verdict for him or her the judgment is arrested, or after judgment for him or her the judgment is reversed on appeal or writ of error, the plaintiff may commence a new action within one (1) year after the nonsuit suffered or judgment arrested or reversed.

Colorado—90 Days
Colo. Rev. Stat. § 13-80-111

(1) If an action is commenced within the period allowed by this article and is terminated because of lack of jurisdiction or improper venue, the plaintiff or, if he dies and the cause of action survives, the personal representative may commence a new action upon the same cause of action within ninety days after the termination of the original action or within the period otherwise allowed by this article, whichever is later, and the defendant may interpose any defense, counterclaim, or setoff which might have been interposed in the original action.

(2) This section shall be applicable to all actions which are first commenced in a federal court as well as those first commenced in the courts of Colorado or of any other state.

Connecticut—1 Year
Conn. Gen. Stat. Ann. § 52-592

(a) If any action, commenced within the time limited by law, has failed one or more times to be tried on its merits because of insufficient service or return of the writ due to unavoidable accident or the default or neglect of the officer to whom it was committed, or because the action has been dismissed for want of jurisdiction, or the action has been otherwise avoided or defeated by the death of a party or for any matter of form; or if, in any such action after a verdict for the plaintiff, the judgment has been set aside, or if a judgment of nonsuit has been rendered or a judgment for the plaintiff reversed, the plaintiff, or, if the plaintiff is dead and the action by law survives, his executor or administrator, may commence a new action, except as provided in subsection (b) of this section, for the same cause at any time within one year after the determination of the original action or after the reversal of the judgment.

* * * *

(d) The provisions of this section shall apply . . . to any action brought to the United States circuit or district court for the district of Connecticut which has been dismissed without trial upon its merits or because of lack of jurisdiction in such court. If such action is within the jurisdiction of any state court, the time for bringing the action to the state court shall commence from the date of dismissal in the United States court, or, if an appeal or writ of error has been taken from the dismissal, from the final determination of the appeal or writ of error.

* * * *

Delaware—1 Year
Del. Code Ann. tit. 10, § 8118(a)

If in any action duly commenced within the time limited therefor in this chapter, the writ fails of a sufficient service or return by any unavoidable accident, or by any default or neglect of the officer to whom it is committed; or if the writ is abated, or the action otherwise avoided or defeated by the death of any party thereto, or for any matter of form; or if after a verdict for the plaintiff, the judgment shall not be given for the plaintiff because of some error appearing on the face of the record which vitiates the proceedings; or if a judgment for the plaintiff is reversed on appeal or a writ of error; a new action may be commenced, for the same cause of action, at any time within 1 year after the abatement or other determination of the original action, or after the reversal of the judgment therein.

Georgia—6 Months
Ga. Code Ann. § 9-2-61

(a) When any case has been commenced in either a state or federal court within the applicable statute of limitations and the plaintiff discontinues or dismisses the same, it may be recommenced in a court of this state or in a federal court either within the original applicable period of limitations or within six months after the discontinuance or dismissal, whichever is later, subject to the requirement of payment of costs in the original action as required by

subsection (d) of Code Section 9-11-41; provided, however, if the dismissal or discontinuance occurs after the expiration of the applicable period of limitation, this privilege of renewal shall be exercised only once.

* * * *

(c) The provisions of subsection (a) of this Code section granting a privilege of renewal shall apply if an action is discontinued or dismissed without prejudice for lack of subject matter jurisdiction in either a court of this state or a federal court in this state.

Illinois—1 Year
735 Ill. Comp. Stat. 5/13-217

(Text of Section WITHOUT the changes made by P.A. 89-7, which has been held unconstitutional [by *Best v. Taylor Mach. Works*, 689 N.E.2d 1057 (Ill. 1997)])

In the actions specified in Article XIII of this Act [735 ILCS 5/13-101 et seq.] or any other act or contract where the time for commencing an action is limited, if judgment is entered for the plaintiff but reversed on appeal, or if there is a verdict in favor of the plaintiff and, upon a motion in arrest of judgment, the judgment is entered against the plaintiff, or the action is voluntarily dismissed by the plaintiff, or the action is dismissed for want of prosecution, or the action is dismissed by a United States District Court for lack of jurisdiction, or the action is dismissed by a United States District Court

for improper venue, then, whether or not the time limitation for bringing such action expires during the pendency of such action, the plaintiff, his or her heirs, executors or administrators may commence a new action within one year or within the remaining period of limitation, whichever is greater, after such judgment is reversed or entered against the plaintiff, or after the action is voluntarily dismissed by the plaintiff, or the action is dismissed for want of prosecution, or the action is dismissed by a United States District Court for lack of jurisdiction, or the action is dismissed by a United States District Court for improper venue.

Indiana—3 Years
Ind. Code § 34-11-8-1

(a) This section applies if a plaintiff commences an action and:

(1) the plaintiff fails in the action from any cause except negligence in the prosecution of the action;

* * * *

(b) If subsection (a) applies, a new action may be brought not later than the later of:

(1) three (3) years after the date of the determination under subsection (a); or

(2) the last date an action could have been commenced under the statute of limitations governing the original action; and be considered a

continuation of the original action commenced by the plaintiff.

Iowa—6 Months
Iowa Code § 614.10

If, after the commencement of an action, the plaintiff, for any cause except negligence in its prosecution, fails therein, and a new one is brought within six months thereafter, the second shall, for the purposes herein contemplated, be held a continuation of the first.

Kansas—6 Months
Kan. Stat. Ann. § 60-518

If any action be commenced within due time, and the plaintiff fail in such action otherwise than upon the merits, and the time limited for the same shall have expired, the plaintiff, or, if the plaintiff die, and the cause of action survive, his or her representatives may commence a new action within six (6) months after such failure.

Kentucky—90 Days
Ky. Rev. Stat. Ann. § 413.270

(1) If an action is commenced in due time and in good faith in any court of this state and the defendants or any of them make defense, and it is adjudged that the court has no jurisdiction of the action, the plaintiff or his representative may, within ninety (90) days from the time of that judgment, commence a new action in the proper court. The time

between the commencement of the first and last action shall not be counted in applying any statute of limitation.

(2) As used in this section, "court" means all courts, commissions, and boards which are judicial or quasi-judicial tribunals authorized by the Constitution or statutes of the Commonwealth of Kentucky or of the United States of America.

Louisiana—Runs Anew
La. Civ. Code art. 3462

Prescription is interrupted when the owner commences action against the possessor, or when the obligee commences action against the obligor, in a court of competent jurisdiction and venue. If action is commenced in an incompetent court, or in an improper venue, prescription is interrupted only as to a defendant served by process within the prescriptive period.

La. Civ. Code Ann. art. 3466

If prescription is interrupted, the time that has run is not counted. Prescription commences to run anew from the last day of interruption.

Maine—6 Months
Me. Stat. tit. 14, § 855

When a summons fails of sufficient service or return by unavoidable accident, or default, or negligence of the officer to whom it was delivered or directed, or

the action is otherwise defeated for any matter of form, or by the death of either party the plaintiff may commence a new action on the same demand within 6 months after determination of the original action; and if he dies and the cause of action survives, his executor or administrator may commence such new action within said 6 months.

Maryland—30 Days
Md. R. 2-101

(a) Generally. A civil action is commenced by filing a complaint with a court.

(b) After Certain Dismissals by a United States District Court or a Court of Another State. Except as otherwise provided by statute, if an action is filed in a United States District Court or a court of another state within the period of limitations prescribed by Maryland law and that court enters an order of dismissal (1) for lack of jurisdiction, (2) because the court declines to exercise jurisdiction, or (3) because the action is barred by the statute of limitations required to be applied by that court, an action filed in a circuit court within 30 days after the entry of the order of dismissal shall be treated as timely filed in this State.

Cross reference: Code, Courts Article, § 5-115.

(c) After Dismissal by the District Court of Maryland for Lack of Subject Matter Jurisdiction. If an action is filed in the District Court of Maryland within the period of limitations prescribed by Maryland law and the District Court dismisses the action for lack of

subject matter jurisdiction, an action filed in a circuit court within 30 days after the entry of the order of dismissal shall be treated as timely filed in the circuit court.

Massachusetts—1 Year
Mass. Gen. Laws ch. 260, § 32

If an action duly commenced within the time limited in this chapter is dismissed for insufficient service of process by reason of an unavoidable accident or of a default or neglect of the officer to whom such process is committed or is dismissed because of the death of a party or for any matter of form, or if, after judgment for the plaintiff, the judgment of any court is vacated or reversed, the plaintiff or any person claiming under him may commence a new action for the same cause within one year after the dismissal or other determination of the original action, or after the reversal of the judgment; and if the cause of action by law survives the executor or administrator or the heir or devisee of the plaintiff may commence such new action within said year.

Michigan—Uncertain Tolling Effect
Mich. Comp. Laws § 600.5856

The statutes of limitations or repose are tolled in any of the following circumstances:

(a) At the time the complaint is filed, if a copy of the summons and complaint are served on the defendant within the time set forth in the supreme court rules.

(b) At the time jurisdiction over the defendant is otherwise acquired.

(c) At the time notice is given in compliance with the applicable notice period under section 2912b, if during that period a claim would be barred by the statute of limitations or repose; but in this case, the statute is tolled not longer than the number of days equal to the number of days remaining in the applicable notice period after the date notice is given.

Mississippi—1 Year
Miss. Code Ann. § 15-1-69

If in any action, duly commenced within the time allowed, the writ shall be abated, or the action otherwise avoided or defeated, by the death of any party thereto, or for any matter of form, or if, after verdict for the plaintiff, the judgment shall be arrested, or if a judgment for the plaintiff shall be reversed on appeal, the plaintiff may commence a new action for the same cause, at any time **within one year** after the abatement or other determination of the original suit, or after reversal of the judgment therein, and his executor or administrator may, in case of the plaintiff's death, commence such new action, within the said one year.

Missouri—1 Year
Mo. Rev. Stat. § 516.230

If any action shall have been commenced within the times respectively prescribed in sections 516.010 to 516.370, and the plaintiff therein suffer a

nonsuit, or, after a verdict for him, the judgment be arrested, or, after a judgment for him, the same be reversed on appeal or error, such plaintiff may commence a new action from time to time, within one year after such nonsuit suffered or such judgment arrested or reversed; and if the cause of action survive or descend to his heirs, or survive to his executors or administrators, they may, in like manner, commence a new action within the time herein allowed to such plaintiff, or, if no executor or administrator be qualified, then within one year after letters testamentary or of administration shall have been granted to him.

Montana—1 Year
Mont. Code Ann. § 27-2-407

If an action is commenced within the time limited for the action and a judgment is reversed on appeal without awarding a new trial or the action is terminated in any other manner than by a voluntary discontinuance, a dismissal of the complaint for neglect to prosecute the action, or a final judgment upon the merits, the plaintiff or, if the plaintiff dies and the cause of action survives, the plaintiff's representative may commence a new action for the same cause after the expiration of the time limited and within 1 year after a reversal or termination.

Nebraska—6 Months
Neb. Rev. Stat. § 25-201.01

(1) If an action is commenced within the time prescribed by the applicable statute of limitations but the plaintiff fails in the action for a reason other

than a reason specified in subsection (2) of this section and the applicable statute of limitations would prevent the plaintiff from commencing a new action, the plaintiff, or his or her representatives if the plaintiff has died and the cause of action survived, may commence a new action within the period specified in subsection (3) of this section.

(2) A new action may not be commenced in accordance with subsection (1) of this section when the original action failed (a) on the merits of the action, (b) as a result of voluntary dismissal by the plaintiff for a reason other than loss of diversity jurisdiction in a federal court, (c) as a result of the plaintiff's failure to serve a defendant within the time prescribed in section 25-217, or (d) as a result of any other inaction on the part of the plaintiff where the burden of initiating an action was on the plaintiff.

(3) A new action may be commenced in accordance with subsection (1) of this section within a period equal to the lesser of (a) six months after the failure of the action or (b) a period after the failure of the action equal to the period of the applicable statute of limitations of the original action.

Nevada—90 Days
Nev. Rev. Stat. § 11.500

1. Notwithstanding any other provision of law, and except as otherwise provided in this section, if an action that is commenced within the applicable period of limitations is dismissed because the court lacked jurisdiction over the subject matter of the

action, the action may be recommenced in the court having jurisdiction within:

(a) The applicable period of limitations; or

(b) Ninety days after the action is dismissed, whichever is later.

* * * *

3. An action may not be recommenced pursuant to paragraph (b) of subsection 1 more than 5 years after the date on which the original action was commenced.

New Hampshire—1 Year
N.H. Rev. Stat. Ann. § 508:10

If judgment is rendered against the plaintiff in an action brought within the time limited therefor, or upon a writ of error thereon, and the right of action is not barred by the judgment, a new action may be brought thereon in one year after the judgment.

New Mexico—6 Months
N.M. Stat. Ann. § 37-1-14

If, after the commencement of an action, the plaintiff fail therein for any cause, except negligence in its prosecution, and a new suit be commenced within six months thereafter, the second suit shall, for the purposes herein contemplated, be deemed a continuation of the first.

New York—6 Months
N.Y. C.P.L.R. § 205(a)

If an action is timely commenced and is terminated in any other manner than by a voluntary discontinuance, a failure to obtain personal jurisdiction over the defendant, a dismissal of the complaint for neglect to prosecute the action, or a final judgment upon the merits, the plaintiff, or, if the plaintiff dies, and the cause of action survives, his or her executor or administrator, may commence a new action upon the same transaction or occurrence or series of transactions or occurrences within six months after the termination provided that the new action would have been timely commenced at the time of commencement of the prior action and that service upon defendant is effected within such six-month period. Where a dismissal is one for neglect to prosecute the action made pursuant to rule thirty-two hundred sixteen of this chapter or otherwise, the judge shall set forth on the record the specific conduct constituting the neglect, which conduct shall demonstrate a general pattern of delay in proceeding with the litigation.

North Carolina—1 Year
N.C. Gen. Stat. § 1A-1, Rule 41

(a) Voluntary dismissal; effect thereof. --

(1) By Plaintiff; by Stipulation. -- . . . Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a

plaintiff who has once dismissed in any court of this or any other state or of the United States, an action based on or including the same claim. If an action commenced within the time prescribed therefor, or any claim therein, is dismissed without prejudice under this subsection, a new action based on the same claim may be commenced within one year after such dismissal unless a stipulation filed under (ii) of this subsection shall specify a shorter time.

(2) By Order of Judge. -- . . .If an action commenced within the time prescribed therefor, or any claim therein, is dismissed without prejudice under this subsection, a new action based on the same claim may be commenced within one year after such dismissal unless the judge shall specify in his order a shorter time.

(b) Involuntary dismissal; effect thereof. -- . . . If the court specifies that the dismissal of an action commenced within the time prescribed therefor, or any claim therein, is without prejudice, it may also specify in its order that a new action based on the same claim may be commenced within one year or less after such dismissal.

Ohio—1 Year
Ohio Rev. Code § 2305.19(A)

In any action that is commenced or attempted to be commenced, if in due time a judgment for the plaintiff is reversed or if the plaintiff fails otherwise than upon the merits, the plaintiff or, if the plaintiff dies and the cause of action survives, the plaintiff's representative may commence a new action within

one year after the date of the reversal of the judgment or the plaintiff's failure otherwise than upon the merits or within the period of the original applicable statute of limitations, whichever occurs later. This division applies to any claim asserted in any pleading by a defendant.

Oklahoma—1 Year
Okla. Stat. tit. 12, § 100

If any action is commenced within due time, and a judgment thereon for the plaintiff is reversed, or if the plaintiff fail in such action otherwise than upon the merits, the plaintiff, or, if he should die, and the cause of action survive, his representatives may commence a new action within one (1) year after the reversal or failure although the time limit for commencing the action shall have expired before the new action is filed.

Oregon—180 Days
Or. Rev. Stat. § 12.220

(1) Notwithstanding ORS 12.020, if an action is filed with a court within the time allowed by statute, and the action is involuntarily dismissed without prejudice on any ground not adjudicating the merits of the action, or is involuntarily dismissed with prejudice on the ground that the plaintiff failed to properly effect service of summons within the time allowed by ORS 12.020 and the statute of limitations for the action expired, the plaintiff may commence a new action based on the same claim or claims against a defendant in the original action if the defendant had actual notice of the filing of the

original action not later than 60 days after the action was filed.

(2) If, pursuant to subsection (1) of this section, a new action is commenced in the manner provided by ORS 12.020 not later than 180 days after the judgment dismissing the original action is entered in the register of the court, the new action is not subject to dismissal by reason of not having been commenced within the time allowed by statute.

* * * *

Pennsylvania—Procedural Requirements
42 Pa. Cons. Stat. § 5103

(a) General rule.--If an appeal or other matter is taken to or brought in a court or magisterial district of this Commonwealth which does not have jurisdiction of the appeal or other matter, the court or magisterial district judge shall not quash such appeal or dismiss the matter, but shall transfer the record thereof to the proper tribunal of this Commonwealth, where the appeal or other matter shall be treated as if originally filed in the transferee tribunal on the date when the appeal or other matter was filed in a court of magisterial district of this Commonwealth. A matter which is within the exclusive jurisdiction of a court or magisterial district judge of this Commonwealth but which is commenced in any other tribunal or this Commonwealth shall be transferred by the other tribunal to the proper court or magisterial district of this Commonwealth where it shall be treated as if

originally filed in the transferee court or magisterial district of this Commonwealth on the date when first filed in the other tribunal.

(b) Federal cases.--

(1) Subsection (a) shall also apply to any matter transferred or remanded by any United States court for a district embracing any part of this Commonwealth. In order to preserve a claim under Chapter 55 (relating to limitation of time), a litigant who timely commences an action or proceeding in any United States court for a district embracing any part of this Commonwealth is not required to commence a protective action in a court or before a magisterial district judge of this Commonwealth. Where a matter is filed in any United States court for a district embracing any part of this Commonwealth and the matter is dismissed by the United States court for lack of jurisdiction, any litigant in the matter filed may transfer the matter to a court or magisterial district of this Commonwealth by complying with the transfer provisions set forth in paragraph (2).

(2) Except as otherwise prescribed by general rules, or by order of the United States court, such transfer may be effected by filing a certified transcript of the final judgment of the United States court and the related pleadings in a court or magisterial district of this Commonwealth. The pleadings shall have the same effect as under the practice in the United States court, but the transferee court or magisterial district judge may require that they be amended to conform to the practice in this Commonwealth.

Section 5535(a)(2)(i) (relating to termination of prior matter) shall not be applicable to a matter transferred under this subsection.

* * * *

Rhode Island—1 Year
9 R.I. Gen. Laws § 9-1-22

If an action is timely commenced and is terminated in any other manner than by a voluntary discontinuance, a dismissal of the complaint for neglect to prosecute the action, or a final judgment upon the merits, the plaintiff, or if he or she dies and the claim survives, his or her executor or administrator, may commence a new action upon the same claim within one year after the termination.

Tennessee—1 Year
Tenn. Code Ann. § 28-1-105(a)

(a) If the action is commenced within the time limited by a rule or statute of limitation, but the judgment or decree is rendered against the plaintiff upon any ground not concluding the plaintiff's right of action, or where the judgment or decree is rendered in favor of the plaintiff, and is arrested, or reversed on appeal, the plaintiff, or the plaintiff's representatives and privies, as the case may be, may, from time to time, commence a new action within one (1) year after the reversal or arrest. Actions originally commenced in general sessions court and subsequently recommenced pursuant to this section in circuit or chancery court shall not be subject to the

monetary jurisdictional limit originally imposed in the general sessions court.

Tenn. Code Ann. § 28-1-115

Notwithstanding any applicable statute of limitation to the contrary, any party filing an action in a federal court that is subsequently dismissed for lack of jurisdiction shall have one (1) year from the date of such dismissal to timely file such action in an appropriate state court.

Texas—60 Days

Tex. Civ. Prac. & Rem. Code Ann. § 16.064

(a) The period between the date of filing an action in a trial court and the date of a second filing of the same action in a different court suspends the running of the applicable statute of limitations for the period if:

(1) because of lack of jurisdiction in the trial court where the action was first filed, the action is dismissed or the judgment is set aside or annulled in a direct proceeding; and

(2) not later than the 60th day after the date the dismissal or other disposition becomes final, the action is commenced in a court of proper jurisdiction.

(b) This section does not apply if the adverse party has shown in abatement that the first filing was

made with intentional disregard of proper jurisdiction.

Utah—1 Year
Utah Code Ann. § 78B-2-111(1)

If any action is timely filed and the judgment for the plaintiff is reversed, or if the plaintiff fails in the action or upon a cause of action otherwise than upon the merits, and the time limited either by law or contract for commencing the action has expired, the plaintiff, or if he dies and the cause of action survives, his representatives, may commence a new action within one year after the reversal or failure.

Vermont—1 Year
Vt. Stat. Ann. tit. 12, § 558(a)

The plaintiff may commence a new action for the same cause within one year after the determination of the original action, when the original action has been commenced within the time limited by any statute of this state, and the action has been determined for any of the following reasons:

* * * *

(2) Where the action is dismissed for lack of jurisdiction of the subject matter or person, improper venue, or failure to join an indispensable party;

* * * *

Virginia—Time Not Counted
Va. Code Ann. § 8.01-229(E)

Dismissal, abatement, or nonsuit.

1. Except as provided in subdivision 3, if any action is commenced within the prescribed limitation period and for any cause abates or is dismissed without determining the merits, the time such action is pending shall not be computed as part of the period within which such action may be brought, and another action may be brought within the remaining period.

* * * *

3. If a plaintiff suffers a voluntary nonsuit as prescribed in § 8.01-380, the statute of limitations with respect to such action shall be tolled by the commencement of the nonsuited action, regardless of whether the statute of limitations is statutory or contractual, and the plaintiff may recommence his action within six months from the date of the order entered by the court, or within the original period of limitation, or within the limitation period as provided by subdivision B 1, whichever period is longer. This tolling provision shall apply irrespective of whether the action is originally filed in a federal or a state court and recommenced in any other court, and shall apply to all actions irrespective of whether they arise under common law or statute.

West Virginia—1 Year
W. Va. Code § 55-2-18(a)

For a period of one year from the date of an order dismissing an action or reversing a judgment, a party may re-file the action if the initial pleading was timely filed and (i) the action was involuntarily dismissed for any reason not based upon the merits of the action or (ii) the judgment was reversed on a ground which does not preclude a filing of new action for the same cause.

Wisconsin—Uncertain Tolling Effect
Wis. Stat. § 893.13(1)

In this section and ss. 893.14 and 893.15 "final disposition" means the end of the period in which an appeal may be taken from a final order or judgment of the trial court, the end of the period within which an order for rehearing can be made in the highest appellate court to which an appeal is taken, or the final order or judgment of the court to which remand from an appellate court is made, whichever is latest.

Wis. Stat. § 893.15

(1) In this section "a non-Wisconsin forum" means all courts, state and federal, in states other than this state and federal courts in this state.

(2) In a non-Wisconsin forum, the time of commencement or final disposition of an action is determined by the local law of the forum.

(3) A Wisconsin law limiting the time for commencement of an action on a Wisconsin cause of action is tolled from the period of commencement of the action in a non-Wisconsin forum until the time of its final disposition in that forum.

(4) Subsection (3) does not apply to an action commenced on a Wisconsin cause of action in a non-Wisconsin forum after the time when the action is barred by a law of the forum limiting the time for commencement of an action.

(5) If an action is commenced in a non-Wisconsin forum on a Wisconsin cause of action after the time when the Wisconsin period of limitation has expired but before the foreign period of limitation has expired, the action in the non-Wisconsin forum has no effect on the Wisconsin period of limitation.

Wyoming—1 Year
Wyo. Stat. Ann. § 1-3-118

If in an action commenced in due time a judgment for the plaintiff is reversed, or if the plaintiff fails otherwise than upon the merits and the time limited for the commencement of the action has expired at the date of the reversal or failure, the plaintiff, or his representatives if he dies and if the cause of action survives, may commence a new action within one (1) year after the date of the failure or reversal. This provision also applies to any claim asserted in any pleading by a defendant.

RECORD
AND
BRIEF

No. 16-460

In the Supreme Court of the United States

STEPHANIE C. ARTIS, PETITIONER,

v.

DISTRICT OF COLUMBIA

On Writ of Certiorari to the
District of Columbia Court of Appeals

BRIEF OF THE STATE OF WISCONSIN AND 23 OTHER STATES AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT

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QUESTION PRESENTED

Whether 28 U.S.C. § 1367 tolls the period of limitations to provide a disappointed federal litigant with 30 days to refile her state-law claim in state court free of an otherwise applicable limitations bar, or whether it stops the clock on the state statute of limitations until federal dismissal, then adds 30 days, so that she may delay refiling in state court for months or even years.

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INTEREST OF *AMICI CURIAE*

The *amici curiae* States of Wisconsin, Alabama, Arizona, Arkansas, Colorado, Hawaii, Idaho, Indiana, Kansas, Louisiana, Michigan, Montana, Nebraska, Nevada, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, West Virginia and Wyoming, have critical, sovereign interests in ensuring that state-law statutes of limitations are not unlawfully and unconstitutionally extended for many years pursuant to Petitioner's mistaken interpretation of 28 U.S.C. § 1367(d). State-law statutes of limitations, which the States regularly enact as part of their sovereign prerogatives, are "fundamental to a well-ordered judicial system." *Bd. of Regents v. Tomanio,* 446 U.S. 478, 487 (1980). "The period sufficient to constitute a bar to the litigation of stale demands, is a question . . . [that] belongs to the discretion of every government, consulting its own interest and convenience." *Sun Oil Co. v. Wortman*, 486 U.S. 717, 726 (1988) (citation omitted). In addition, the States have a core interest in this case because, under Petitioner's interpretation of Section 1367(d), state-created entities such as towns and cities, *see City of Trenton v. New Jersey,* 262 U.S. 182, 187 (1923), would be subject to stale state-law claims.

INTRODUCTION AND SUMMARY OF ARGUMENT

Section 1367(d) provides that the "period of limitations" for a supplemental state-law claim that has

been dismissed by a federal court "shall be tolled while the claim is pending [before the federal court] and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period." 28 U.S.C. § 1367(d). The States agree with the District's thorough, convincing argument that Section 1367(d) removes an otherwise applicable limitations bar "while the claim is pending and for a period of 30 days after it is dismissed." That is both consistent with the ordinary meaning of "toll" and the statutory context in which it appears. Resp. Br. 12–28.

Petitioner's contrary reading of Section 1367(d) would add months or *years* to state-law limitations periods, above and beyond the 30-day refiling window, needlessly raising grave constitutional, federalism-based concerns. *See* Pet. Br. 12. Specifically, under Petitioner's view, the state-law statute of limitations is extended not only "for a period of 30 days after [the federal] dismiss[al]," 28 U.S.C. § 1367(d), but also for potentially years more *in addition to those 30 days* depending upon how much time remained on the limitations period when the plaintiff filed in federal court. *See* Pet. Br. 12 ("A litigant who comes to federal court with one year left on the limitations period for her state-law claim will have one year remaining on that claim in the event it is dismissed, and that year begins running 30 days after the date of dismissal."). Petitioner's interpretation would also regularly displace state-law tolling periods for dismissed claims. Resp. Br. 22–25.

If this Court adopts Petitioner's erroneous interpretation of Section 1367(d)—which includes potentially years-long extensions of state-law limitations periods beyond the 30-day refiling window—this Court would need to address the grave constitutional, federalism-based implications of such a gratuitous provision. While this case involves the District, over which Congress has plenary authority, *see* U.S. Const. art. I, § 8, cl. 17; *see also United States v. Lopez*, 514 U.S. 549, 589 (1995) (Thomas, J., concurring), 28 U.S.C. § 1367 does not distinguish between claims brought under the District's laws and those brought under laws enacted by the States, *see* 28 U.S.C. § 1367(e). Indeed, the overwhelming majority of Section 1367(d)'s applications will involve state-law causes of action.

Contrary to Petitioner's argument, Pet. Br. 32–34, this Court's decision in *Jinks v. Richland County*, 538 U.S. 456 (2003), does nothing to resolve the serious constitutional, federalism-based issues with extending the 30-day refiling window by years. A review of the *Jinks* parties' briefing, the oral argument transcript, and the *Jinks* opinion itself reveals that the case was litigated and decided on the assumption that Section 1367(d) created only a "*de minimis* tolling period of 30 days in which the plaintiff could refile in state court if the limitations period had expired." Pet. Br., *Jinks v. Richland Cnty.*, 538 U.S. 456 (2003) (No. 02–258), 2002 WL 31769150, at *4–5. So far as the States have been able to determine, no party or Justice in *Jinks* ever suggested or considered Petitioner's

argument here that Section 1367(d) would, in addition to the 30-day refiling window, extend state limitations periods for months or years more.

Petitioner's interpretation of Section 1367(d) would render that provision in excess of Congress' authority under the Inferior Courts Clause and the Necessary and Proper Clause.

Petitioner's reading would fail the Necessary and Proper Clause's "necessary" component under the mandatory "means-end rationality" analysis. *See United States v. Comstock*, 560 U.S. 126, 134–35 (2010); *id.* at 150–53 (Kennedy, J., concurring in the judgment). As all parties agree, Section 1367(d), at a minimum, allows disappointed litigants to refile in state court "for a period of 30 days after [the federal] dismiss[al]." 28 U.S.C. § 1367(d). That 30-day window allows a plaintiff to refile her state-law claim in state court without those claims being "time barred." *Jinks*, 538 U.S. at 462. The only "ends" that Petitioner can articulate for her argument that Section 1367(d) adds months or years more to the 30-day refiling period is that this would give the plaintiff more time to mull her "strategic" options, in terms of what next steps (if any) to take in state court. Pet. Br. 14–15; *accord* Pet. Br. 28. But some plaintiffs' subjective desires for more time to make decisions regarding their state-law claims in state court is not meaningfully linked to any federal interest. And the "means" that Petitioner believes that Congress selected—adding potentially years to the 30-day refiling window—

would deeply disrupt state sovereign interests, especially given the common, well-known delays in modern federal litigation. Petitioner's means would thus needlessly require state litigants and state courts to deal with claims "too stale to be adjudicated certainly." *Sun Oil Co.*, 486 U.S. at 730.

Petitioner's understanding would also render Section 1367(d) an "[im]proper" means for carrying out Congress' authority under the Inferior Courts Clause. Under Petitioner's theory, Congress has the authority to rewrite state statutes of limitations, and displace state-law tolling periods for dismissed claims, to provide litigants with years more time to make certain "strategic decisions" regarding what to do with state-law claims in state court. That theory would permit Congress to extend for years, or even eliminate, state statutes of limitations without any meaningful federal interest. This would improperly interfere with the States' core, sovereign authority to set limitations periods, which authority "belongs to the discretion of every government, consulting its own interest and convenience." *Sun Oil Co.*, 486 U.S. at 726 (citation omitted).

For much the same reasons, to the extent that this Court were to conclude that Section 1367(d) is ambiguous as between the District's and Petitioner's interpretations, the constitutional avoidance doctrine, *Nat'l Fed'n of Indep. Bus. v. Sebelius* ("*NFIB*"), 567 U.S. 519, 562 (2012) (opinion of Roberts, C.J.), and the

federalism rule of clear statement, *see Gregory v. Ashcroft*, 501 U.S. 452, 460–61 (1991), would strongly favor the District's reading.

On the other hand, if this Court ultimately concludes that Petitioner's interpretation of Section 1367(d) is unambiguously correct, the proper answer to the Question Presented would be to sever off as invalid the portion that would be read as unconstitutionally extending the state limitations period for months or years, while leaving the "for a period of 30 days after [the federal] dismiss[al]" provision, 28 U.S.C. § 1367(d), undisturbed. This would be consistent with congressional intent, as it would keep state-law claims from automatically becoming "time barred." *Jinks*, 538 U.S. at 462.

Finally, the constitutional, federalism-based issues that the States discuss in this brief are fairly before this Court. While the District is not a State and thus cannot assert these arguments on its own behalf, *see supra* pp. 2–3; Resp. Br. 38 n.17, the District in its Brief in Opposition raised the serious federalism implications of Petitioner's interpretation for the States, analogizing to this Court's holding in *Raygor v. Regents of University of Minnesota*, 534 U.S. 533, 543 (2002), which also dealt with a constitutional, federalism-based challenge to an interpretation of Section 1367(d), Br. in Opp. 14 & n.4. The lower court also flagged the "federalism concerns" raised by Petitioner's position. Pet. App. 9a. And, of course, issues

of constitutional avoidance are inexorably intertwined with the merits of the constitutional argument itself. *See NFIB*, 567 U.S. at 562 (opinion of Roberts, C.J.) (applying constitutional avoidance only after concluding that a contrary reading of the statute would exceed Congress' Commerce Clause authority); *cf. Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 216 n.2 (1995) (where a "reading of [a] statute would avoid a constitutional question," and would favor affirmance, it is "prudent to entertain the argument," regardless of whether it was raised below). That is why Petitioner's brief extensively analyzed *Jinks*' Necessary and Proper Clause holding. *See* Pet. Br. 32–34.

ARGUMENT

I. This Court In *Jinks* Only Considered The Constitutionality Of The 30-Day-Window Interpretation Of Section 1367(d)

Petitioner attempts to evade the constitutional problems with her interpretation of Section 1367(d) by relying upon this Court's constitutional holding in *Jinks*. Pet. Br. 32–34. But *Jinks* did not consider whether Congress has the constitutional authority, under the Inferior Courts Clause and the Necessary and Proper Clause, to extend state statutes of limitations for months or years beyond a 30-day refiling window. To the contrary, all available evidence indicates that *Jinks* was decided under the assumption that Section 1367(d) provided for only a 30-day refiling period after a federal dismissal, preventing those

claims from becoming "time barred while pending in federal court." *Jinks*, 538 U.S. at 464.

The parties' briefing in *Jinks* rested upon the assumption that Section 1367(d) provided disappointed litigants with only a 30-day period to refile their claims after a federal dismissal. The petitioner in *Jinks*, who sought to defend Section 1367(d)'s constitutionality, argued that the provision created only a "*de minimis* tolling period of 30 days in which the plaintiff could refile in state court if the limitations period had expired." Pet. Br., *Jinks v. Richland Cnty.*, 538 U.S. 456 (2003) (No. 02–258), 2002 WL 31769150, at *4–5; *accord id.* at *33. The *Jinks* petitioner took the same position in her Petition for Certiorari, explaining that "Section 1367(d) merely saves—for a maximum excess period of 30 days—a preexisting lawsuit that must be refiled to allow the matter to be heard in a forum preferable to the State, namely, in its own courts," adding that "Congress conditioned the return of cases to state courts on the fact that there would be a small 30-day window in which those cases may be reasserted." Pet. for Writ of Cert., *Jinks v. Richland Cnty.*, 538 U.S. 456 (2003) (No. 02–258), 2002 WL 32101030, at *22–25. The *Jinks* respondent articulated the same view, describing Section 1367(d) as merely creating "a thirty-day tolling window." Resp. Br., *Jinks v. Richland Cnty.*, 538 U.S. 456 (2003) (No. 02–258), 2003 WL 145133, at *31. The United States, intervening to defend Section 1367(d)'s constitutionality, appeared to adopt the same reading: "[Section 1367(d)] ensur[es] that, if a plaintiff's

federal-court complaint (including a pendent state-law claim) is filed within the time period allowed by state law for asserting the state-law claim standing alone, the statute of limitations on the pendent claim *will not expire* during the pendency of the federal-court action." Br. of United States, *Jinks v. Richland Cnty.*, 538 U.S. 456 (2003) (No. 02–258), 2002 WL 31788564, at *22 (emphasis added).

This same understanding was on display at the *Jinks* oral argument. As one Justice observed, there did not appear to be any "significant difference" in terms of state courts being forced to entertain "stale claims" as between Section 1367(d) and in the "removal" context. Oral Arg. Tr. at 37–38, *Jinks v. Richland Cnty.*, 538 U.S. 456 (2003) (No. 02–258). But that would be true only if Section 1367(d) simply provided a 30-day refiling window, which would be roughly analogous to a federal district court remanding a removed case to state court. *See Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 351–52 (1988). Under Petitioner's reading of the statute, the consequences would be *entirely* different, given that Petitioner's interpretation would often extend the limitations period for *years*, leading to a deluge of additional stale claims in state court. *See infra* pp. 20–22.

When this Court in *Jinks* issued its decision holding that Section 1367(d) was within Congress' authority under the Necessary and Proper Clause, this Court gave no indication that it was addressing the

constitutionality of Congress adding years to the 30-day refiling period. The *Jinks* petitioner filed her state-law claims in state court 16 days after the federal court had dismissed those claims, 349 S.C. 298, 301, 563 S.E.2d 104, 105 (2002), within the 30-day window contemplated by the *Jinks* parties' understanding of Section 1367(d). This Court held that this 30-day provision fell within Congress' Necessary-and-Proper-Clause authority because, without such a provision, federal courts and plaintiffs would need to engage in unusual, duplicative, and costly stratagems to avoid the expiration of state-law claims immediately after a federal dismissal. *See* 538 U.S. at 463–64. As discussed in more detail below, the 30-day refiling period that the *Jinks* parties articulated comprehensively resolves all of these difficulties, *see infra* p. 15, by preventing supplemental claims from immediately becoming "time barred," 538 U.S. at 462. This Court gave no indication that Congress had the authority to gratuitously extend state-law statutes of limitations for additional periods of years, on top of the "period of 30 days" it expressly provided for.

II. Petitioner's Interpretation Of Section 1367(d) Would Render That Provision Unconstitutional

A. Congress' powers are "few and defined," while the powers of the States are "numerous and indefinite." *The Federalist No. 45*, p. 313 (James Madison) (J. Cooke ed. 1961). Article I, Section 8 of the Consti-

tution provides a list of specific areas over which Congress has authority, and this "enumeration presupposes something not enumerated." *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 195 (1824). The Tenth Amendment confirms where those unenumerated powers reside: "The powers not delegated to the United States by the Constitution . . . are reserved to the States respectively, or to the people." U.S. Const. amend. X. The reserved authority of the States extends "to all the objects . . . [that] concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State." *The Federalist No. 45*, p. 313 (James Madison) (J. Cooke ed. 1961); *see generally NFIB*, 567 U.S. at 535–36.

One of Congress' enumerated powers is the Inferior Tribunals Clause, which authorizes Congress "[t]o constitute tribunals inferior to the Supreme Court." U.S. Const. art. I, § 8, cl. 9. This Clause "plainly relates to" inferior *federal* courts only; "it has never been relied on for establishment of any other tribunals," including state courts. *Glidden Co. v. Zdanok*, 370 U.S. 530, 543 (1962) (opinion of Harlan, J.); *see* Anthony J. Bellia Jr., *Federal Regulation of State Court Procedures*, 110 Yale L.J. 947, 963 (2001) ("Congress has no corresponding power in the Constitution to constitute state courts qua state courts."). State courts "emanate from a different authority, and are the creatures of a distinct government," so they could not possibly be "inferior" to federal tribunals. *Ex parte Bollman*, 8 U.S. (4 Cranch) 75, 97 (1807).

Under the Necessary and Proper Clause, Congress has authority to "make all Laws which shall be necessary and proper for carrying into Execution" its enumerated powers. U.S. Const. art. I, § 8, cl. 18. This Clause is "'merely a declaration, for the removal of all uncertainty, that the means of carrying into execution those [powers] otherwise granted are included in the grant.'" *Kinsella v. U.S. ex rel. Singleton*, 361 U.S. 234, 247 (1960) (quoting VI *Writings of James Madison* 383 (G. Hunt ed. 1906)); *see also The Federalist No. 33*, p. 204 (Alexander Hamilton) (J. Cooke ed. 1961) (explaining that the Necessary and Proper Clause is "only declaratory of a truth, which would have resulted by necessary and unavoidable implication from the very act of constituting a federal government, and vesting it with certain specified powers").

This Court regularly scrutinizes federal statutes for compliance with both the "necessary" and the "proper" components of the Necessary and Proper Clause. *See, e.g.*, *Comstock*, 560 U.S. at 134–35; *NFIB*, 567 U.S. at 558–61 (opinion of Roberts, C.J.). The "necessary" aspect of the Clause includes a "means-end rationality" analysis, which considers "whether the means chosen are reasonably adapted to the attainment of a legitimate end under the [enumerated power]." *Comstock*, 560 U.S. at 134–35 (citation omitted). "[M]eans-end rationality" does not invoke the minimal rationality analysis from some other areas of this Court's jurisprudence, such as substantive due process analysis of economic regulations.

See id. at 150–53 (Kennedy, J., concurring in the judgment). Rather, the Necessary and Proper Clause demands a meaningful inquiry into both the ends sought and means used to obtain those ends, including the federalism-related implications of those means. *See id.* Meanwhile, a law is "proper" if it is "consist[ent] with the letter and spirit of the constitution." *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 421 (1819). A statute is improper if that law "invade[s] state sovereignty or otherwise improperly limit[s] the scope of powers that remain with the States." *Comstock*, 560 U.S. at 144 (citation omitted); *see NFIB*, 567 U.S. at 559–60 (opinion of Roberts, C.J.).

This Court in *Jinks* applied this Necessary-and-Proper-Clause framework to the 30-day-refiling-period view of Section 1367(d). *See* 538 U.S. at 462–64; *see also supra* pp. 9–10. This Court held that Section 1367(d) was "necessary" to carrying out Congress' authority under the Inferior Courts Clause to protect the "due administration of justice in federal court[s]" by "promot[ing] [their] fair and efficient operation." 538 U.S. at 462–63. This Court explained that Section 1367(d) "provides an alternative to the unsatisfactory options that federal judges faced when they decided whether to retain jurisdiction over supplemental state-law claims that might be time barred in state court" and "eliminates a serious impediment to access to the federal courts on the part of plaintiffs pursuing federal" claims by no longer forcing them to choose between "run[ning] the risk that the federal court would

dismiss the state-law claims," "abandon[ing] their right to a federal forum," or filing actions in both federal and state court, thereby increasing their litigation costs. *Id.* at 462–64. Further, *Jinks* held that the 30-day refiling window is a "'proper' exercise of Congress' Article I powers." *Id.* at 464. In reaching that conclusion, this Court rejected the *Jinks* respondent's view that any congressional tolling of a state statute of limitations is improper because that would regulate "state-court 'procedure.'" *Id.* at 464–65.

B. Petitioner's reading of Section 1367(d) as extending state statutes of limitations not only for "a period of 30 days after [] dismiss[al]," 28 U.S.C. § 1367(d), but for months or years beyond those 30 days, goes far beyond what this Court considered and approved in *Jinks*, *see supra* Part I. All parties agree that Section 1367(d)'s text allows a disappointed plaintiff to refile her dismissed claim in state court for (at a minimum) "a period of 30 days after [its federal] dismiss[al]." 28 U.S.C. § 1367(d). Under Petitioner's interpretation, however, this refiling period lasts for *potentially years on top of that 30 days*. And Petitioner concedes that a 30-day period, standing alone, "guarantees" a plaintiff the right to refile in state court after a federal dismissal. Pet. Br. 27. The constitutional question is thus whether Petitioner's interpretation, which provides an additional and gratuitous extension of time to refile for months or even years in addition to the 30-day window (while also regularly overriding state-law tolling periods for dismissed claims, Resp. Br. 22–25), would be within

Congress' authority to enact. As explained below, Petitioner's reading renders Section 1367(d) neither "necessary" nor "proper."

1. *Necessary.* Plaintiff's reading of Section 1367(d) is not "tailored" to carrying out any enumerated power, and would fail the Necessary and Proper Clause's "means-ends" analysis. *See Comstock*, 560 U.S. at 134–35, 148; *see id.* at 150–52 (Kennedy, J., concurring in the judgment).

The "ends" that Petitioner claims that her interpretation forwards are not meaningfully connected to any interests under the Inferior Courts Clause. The allegedly salutary ends that Petitioner identifies as flowing from her interpretation are giving some plaintiffs whose state-law claims have been dismissed by federal courts additional time beyond the 30-day refiling period to mull certain "strategic decisions" regarding whether and how to proceed with their state-law claims in state court. Pet. Br. 14–15; *accord* Pet. Br. 28. But these speculative, non-federal ends are not meaningfully linked to any interest under the Inferior Courts Clause, such as protecting the "due administration of justice in federal court," by "promot[ing] fair and efficient operation." *Jinks*, 538 U.S. at 462–63. After all, simply permitting the plaintiff to refile "for a period of 30 days after [] dismiss[al]," 28 U.S.C. § 1367(d), already eliminates entirely the difficult choices that federal courts and plaintiffs previously faced, *Jinks*, 538 U.S. at 459, 463–65. At a minimum, any tangential federal ends

advanced by Petitioner's understanding would be insubstantial when compared to the serious sovereignty-based harms from mangling state limitations periods by extending those periods for years beyond "30 days after [ ] dismiss[al]." 28 U.S.C. § 1367(d).

The "means" that Petitioner believes Congress chose to achieve these insignificant, non-federal ends—extending state statutes of limitations potentially for years beyond the 30-day refiling window while also displacing the States' own tolling provisions for dismissed claims—are deeply disruptive to the States' sovereign interests. As discussed in more detail below, *see infra* pp. 22–25, setting state-law limitations periods is a core sovereign right, which "belongs to the discretion of every government, consulting its own interest and convenience." *Sun Oil Co.*, 486 U.S. at 726 (citation omitted). Statutes of limitations are "not simply technicalities"; they are "fundamental to a well-ordered [state] judicial system." *Tomanio*, 446 U.S. at 487. States enact limitations periods to protect litigants and their court systems. *See Sun Oil*, 486 U.S. at 730. Litigation that occurs too long after the disputed conduct concludes forces courts and litigants to deal with stale claims. *See Sun Oil Co.*, 486 U.S. at 730; *R.R. Telegraphers v. Ry. Express Agency, Inc.*, 321 U.S. 342, 348–49 (1944).

Petitioner's means are especially disruptive to the States' sovereign interests because common delays in

modern federal litigation often stall for years the refiling of claims in state court.[1]

"Disposition time for civil cases or, more specifically, undue delay endures as a problem that hamstrings the administration of civil justice." Michael Heise, *Justice Delayed?: An Empirical Analysis of Civil Case Disposition Time*, 50 Case W. Res. L. Rev. 813, 818 (2000); *see* Carrie E. Johnson, Comment, *Rocket Dockets: Reducing Delay in Federal Civil Litigation*, 85 Cal. L. Rev. 225, 264 (1997). This has led to "congested civil dockets in federal courts." *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 56 (1993). "Despite [ ] recent rule changes, complaints about . . . delays . . . in [federal] civil litigation

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[1] Of course, the length of litigation is not a modern phenomenon. Charles Dickens' *Bleak House* famously describes a lawsuit that had "become so complicated, that no man alive knows what it means," and that, with its "legion" pleadings, "still drags its dreary length before the Court." Charles Dickens, *Bleak House* 5–6 (Wordsworth ed. 1993) (1853). Dickens was only "reworking long familiar themes." Neil M. Gorsuch, *Law's Irony*, 37 Harv. J.L. & Pub. Pol'y 743, 744 (2014). Before him, it was Hamlet who bemoaned "the law's delay." William Shakespeare, *Hamlet*, act 3, sc. 1. In Germany, Johann Wolfgang von Goethe gave up on the law "after witnessing thousands of aging cases waiting vainly for resolution in the courts of his time." Gorsuch, *supra*, at 744 (citation omitted). And "Demosthenes plied similar complaints 2000 years ago." *Id.* These accounts "resonate[ ] today . . . because the law's promise of deliberation and due process sometimes—ironically—invites the injustices of delay and irresolution." *Id.* at 743.

have persisted." Judicial Conference Advisory Committee on Civil Rules and the Committee on Rules of Practice and Procedure, *Report to the Chief Justice of the United States on the 2010 Conference on Civil Litigation* 1 (2010), *available at* https://goo.gl/5Y2qG9. The Judicial Conference of the United States thus held a symposium in 2010 to "consider[ ] ways to address the problems of costs and delays in the federal civil justice system," which prompted some reform. *Id.*

Still, long delays in federal civil litigation continue and increase. *See* Joe Palazzolo, *In Federal Courts, the Civil Cases Pile Up*, Wall St. J. (Apr. 6, 2015), *available at* https://goo.gl/5XMc25. In the spring of 2015, "[m]ore than 330,000 [federal civil] cases were pending as of [the prior fall]—a record—up nearly 20% since 2004." Palazzolo, *supra*. And "[t]he number of cases awaiting resolution for three years or more exceeded 30,000 for the fifth time in the past decade." *Id.*; *see also* American College of Trial Lawyers Task Force on Discovery and Civil Justice and the Institute for the Advancement of the American Legal System, *Reforming Our Civil Justice System: A Report on Progress & Promise* 13 (2015), *available at* https://goo.gl/Kpr2kt (reporting continued "delay and expense in our civil justice system"). Over the twelve-month period ending in March of 2017, for example, 61,011 civil cases pending in federal district courts—17 percent of the civil docket—were over 3 years old. U.S. Courts, *United States District Courts—National Judicial Caseload Profile* 1, *available at*

https://goo.gl/yFWgS6 (hereinafter "2017 District Court Dockets").

Supplemental state-law claims are common in these oft-long-running federal cases, a reflection of the "overlap between state . . . and federal" law. *Will v. Calvert Fire Ins. Co.*, 437 U.S. 655, 663 (1978). In prisoner litigation—which has spiked since 1999, Palazollo, *supra*, *see 2017 District Court Dockets* 1 (26 percent of civil cases are "[p]risoner [p]etitions," and 13 percent are "[c]ivil [r]ights" actions, of which many are prisoner suits)—state-law claims are common. *See, e.g.*, *Lacour v. Duckworth*, No. 17-CV-00453, 2017 WL 3313702, at *1 (S.D. Ill. Aug. 3, 2017) (supplemental claim in prisoner case); *Wilson v. Barnes*, No. 07-5016, 2007 WL 3232572, at *4 (D.N.J. October 31, 2007) (same); Pet. App. 3a (supplemental civil-rights claim); *Pettis v. Brown Grp. Retail, Inc.*, 896 F. Supp. 1163, 1164 (N.D. Fla. 1995) (same). Likewise, litigants frequently plead supplemental claims in personal-injury and product-liability cases, *see, e.g.*, *In re Ford Motor Co. Ignition Switch Prod. Liab. Litig.*, 19 F. Supp. 2d 263, 266 (D.N.J. 1998); *Vidovic v. Losinjska Plovidba Oour Broadarstvo*, 868 F. Supp. 691, 695 (E.D. Pa. 1994), which categories of lawsuits make up 13 percent of federal civil cases, *2017 District Court Dockets* 1. The same is true of labor suits (6 percent of federal civil docket), other tort cases (7 percent), and intellectual-property litigation (almost 4 percent). *See 2017 District Court Dockets* 1; *Lindsay v. Gov't Emps. Ins. Co.*, 448 F.3d 416, 418 (D.C. Cir. 2006) (supplemental labor-law claims); *Ansoumana v.*

Gristede's Operating Corp., 201 F.R.D. 81, 89 (S.D.N.Y. 2001) (same); *Jinks*, 538 U.S. at 460 (supplemental tort claim); *Javid v. Scott*, 913 F. Supp. 223, 229 (S.D.N.Y. 1996) (same); *Marshall Tucker Band, Inc. v. M T Indus., Inc.*, No. CV 7:16-00420, 2017 WL 784761, at *5 (D.S.C. Mar. 1, 2017) (supplemental trademark claims); *Blakeman v. Walt Disney Co.*, 613 F. Supp. 2d 288, 315 (E.D.N.Y. 2009) (supplemental claims in copyright case).

In light of these realities, the "means," *Comstock*, 560 U.S. at 134–35, of Petitioner's interpretation of Section 1367(d) would impose extremely serious harms upon the sovereign States, undermining their authority to protect state litigants and courts from stale claims. Petitioner concedes that Section 1367(d)'s 30-day period "guarantees a plaintiff who is unsuccessful in federal court the opportunity to bring a claim in state court." Pet. Br. 27. Yet Petitioner's reading has often added *years* to this period in jurisdictions where that reading has prevailed. *See, e.g.*, *Turner v. Knight*, 957 A.2d 984, 985–86 (Md. 2008) (state-law statute of limitations is 3 years; limitations period extended to 6.9 years, including 2 years after federal dismissal); *Terrell v. Larson*, No. A07-870, 2008 WL 2168348, at *11 (Minn. Ct. App. May 27, 2008) (state-law statute of limitations is 3 years; limitations period extended to 6.6 years, including 2 years after federal dismissal). This same result would have obtained if Petitioner's approach had been applied in jurisdictions where the District's interpretation has controlled. *See, e.g.*, *Berke v. Buckley Broad.*

Corp., 821 A.2d 118, 121 (N.J. Super. Ct. App. Div. 2003) (state-law statute of limitations is 6 years; limitations period under Petitioner's view would have been 12 years, including 5.6 years after federal dismissal); *Krause v. Textron Fin. Corp.*, No. 42006CA219, 2007 WL 8054628, at *1–2 (Fla. Cir. Ct. May 9, 2007) (order granting motion to dismiss) (state-law statute of limitations is 5 years; limitations period under Petitioner's view would have been 10.7 years, including 4.1 years after federal dismissal); *Harter v. Vernon*, 532 S.E.2d 836, 840 (N.C. Ct. App. 2000) (state-law statute of limitations is 3 years; limitations period under Petitioner's view would have been 6.2 years, including 2.5 years after federal dismissal); *Norex Petroleum Ltd. v. Blavatnik*, 22 N.Y.S.3d 138 (Table), at *3–4, *14 (N.Y. Sup. Ct. 2015) (state-law statute of limitations is 2 years; limitations period under Petitioner's view would have been 11.1 years, including 2 years after federal dismissal); *Gottschalk v. Woods*, 766 S.E.2d 130, 132 & n.3 (Ga. Ct. App. 2014) (state-law statute of limitations is 2 years; limitations period under Petitioner's view would have been 4.2 years, including 1.8 years after federal dismissal). And the longer the state limitations period is extended, the greater the harm is to state interests in avoiding state courts finding themselves awash in claims "too stale to be adjudicated certainly." *Sun Oil Co.*, 486 U.S. at 730.

In all, given that Petitioner is unable to articulate how her interpretation is "tailored" to serving any meaningful "ends" under the Inferior Courts Clause,

Comstock, 560 U.S. at 148, and given the serious sovereignty-based harms that this interpretation's "means" would impose upon the States, *id.* at 134–35, Congress would have no authority to enact Petitioner's understanding of Section 1367(d).

2. *Proper*. Petitioner's reading would also make Section 1367(d) an "[im]proper" method for carrying out congressional powers because it would "invade state sovereignty [and] otherwise improperly limit the scope of powers that remain with the States." *Comstock*, 560 U.S. at 144 (citation omitted); *see NFIB*, 567 U.S. at 559–60 (opinion of Roberts, C.J.).

Under our constitutional system, States have a sovereign prerogative to control state-law litigation in state courts, *Ex parte Bollman*, 8 U.S. (4 Cranch) at 97; *Felder v. Casey*, 487 U.S. 131, 138 (1988), including setting—and providing for any tolling of—statutes of limitations for state-law causes of action. "[T]he time after which suits or actions shall be barred, has been from a remote antiquity fixed by every [government], in virtue of that sovereignty by which it exercises its legislation for all persons and property within its jurisdiction." *McElmoyle v. Cohen*, 38 U.S. (13 Pet.) 312, 327 (1839). Hence "'[t]he period sufficient to constitute a bar to the litigation of [stale] demands, is a question . . . which belongs to the discretion of every government, consulting its own interest and convenience.'" *Sun Oil Co.*, 486 U.S. at 726 (quoting 2 J. Kent, *Commentaries on American Law* 462–63 (2d ed. 1832)); *see also Rummel v. Estelle*, 445

U.S. 263, 303 (1980) (Powell, J., dissenting) ("[T]he Constitution recognizes and preserves the autonomy and independence of the States—independence in their legislative and independence in their judicial departments." (citation omitted)). "[L]aws limiting the time of bringing suit, constitute a part of the lex fori of every country: they are laws for administering justice; one of the most sacred and important of sovereign rights and duties: and a restriction which must materially affect both legislative and judicial independence." *Hawkins v. Barney's Lessee*, 30 U.S. (5 Pet.) 457, 466 (1831).

Far from "simpl[e] technicalities," limitations periods are "fundamental to a well-ordered [state] judicial system," *Tomanio*, 446 U.S. at 487, striking a critical balance between competing state policy interests, *see United States v. Marion*, 404 U.S. 307, 323 n.14 (1971) (statutes of limitations "represent a legislative judgment about the balance of equities"). Competing against their interest in keeping court doors open, States balance several other important goals. States have an interest in "determining when" claims created under their law are "too stale to be adjudicated certainly"; which interest alone "suffices to give [them] legislative jurisdiction to control the remedies available in [their] courts by imposing statutes of limitations." *Sun Oil Co.*, 486 U.S. at 730. Relatedly, States have a "substantive interest in giving individuals repose from ancient breaches of law." *Id.* at 736 (Brennan, J., concurring in part and concurring in the judgment).

States also craft statutes of limitations with an eye toward "regulating the work load of [their] courts." *Sun Oil Co.*, 486 U.S. 730; *see also id.* at 736 (Brennan, J., concurring in part and concurring in the judgment). As it is, state-court dockets are extremely overloaded. A recent study by the National Center for State Courts confirms "the longstanding criticism that the civil justice system [in the states] takes too long and costs too much," which means that "many litigants with meritorious claims and defenses are effectively denied access to justice in state courts because it is not economically feasible to litigate those cases." National Center for State Courts Civil Justice Initiative, *The Landscape of Civil Litigation in State Courts* v (2015), *available at* https://goo.gl/MiWoCB. Systemic delay, in turn, causes a decline in confidence in the state courts, further discouraging those with strong claims from seeking judicial redress in the first place. *See Interim Report on the Joint Project of the American College of Trial Lawyers Task Force on Discovery and the Institute for the Advancement of the American Legal System* A-6 (2008), *available at* https://goo.gl/UayLaU (reporting that over 80 percent of the American College of Trial Lawyers say that delay, in addition to discovery costs, prevents truly wronged parties from filing lawsuits). States have sovereign reasons to prevent this problem from worsening, including to ensure that stale cases do not increasingly crowd out meritorious ones.

Petitioner's theory in this case—that Congress' authority under the Inferior Courts Clause and the

Necessary and Proper Clause is capacious enough to allow it to adopt any measure that makes a former federal litigant's state-court-related "strategic decision-[making]" easier, Pet. Br. 14–15—would grant to Congress a plenary power over state statutes of limitations, undermining core state sovereignty interests. *See NFIB*, 567 U.S. at 559 (opinion of Roberts, C.J.) (the Necessary and Proper Clause should not be read to "license the exercise of any great substantive and independent powers" (citation omitted)). This would be "[im]proper" because it would "invade state sovereignty [and] otherwise improperly limit the scope of powers that remain with the States." *Comstock*, 560 U.S. at 144 (citation omitted). Put another way, if this Court were to hold that the fig leaf of giving plaintiffs additional time beyond the already provided 30-day refiling period to ponder their future state-court "strateg[y]" thereby permits Congress to extend state-law limitations periods for *years*, there would be no stopping point to what Congress could do to state statutes of limitations. Nothing would prevent Congress from extending state limitations periods by decades, or even from extinguishing them altogether, as that would obviously give former federal litigants even more time to consider their state-court strategies. The States would have lost an aspect of their "sovereignty," which has belonged to "every" government "from a remote antiquity." *McElmoyle*, 38 U.S. (13 Pet.) at 327. This "sacred and important [ ] sovereign right[ ] and dut[y]" could then be removed from States at unilateral congressional whim, *Hawkins*, 30 U.S. (5 Pet.) at 466, no matter how flimsy the reason.

Contrary to Petitioner's arguments, Pet. Br. 32–34, nothing in *Jinks* or *Stewart v. Kahn*, 78 U.S. (11 Wall.) 493 (1870), refutes the conclusion that Petitioner's interpretation would make that provision "[im]proper." *Jinks* rejected only the respondent's bright-line argument that it was improper for Congress ever to alter state-law statutes of limitations—even to create a *de minimis* 30-day refiling period—because that would regulate "state-court 'procedure.'" 538 U.S. at 464–65. The States' argument here is different in kind; it is improper for Congress to assert plenary authority over state-law statutes of limitations, gratuitously extending those limitations for additional years without any meaningful federal justification. And *Stewart* held that Congress had authority to extend state-law limitations periods in light of the special circumstances of the Civil War. 78 U.S. (11 Wall.) at 507. That statute was consistent with this Court's prior equitable holding that, even "independent of [any] Congress[ional] Act, . . . statutes of limitations were [equitably] tolled for 'the time during which the courts in the States lately in rebellion were closed to the citizens of the loyal States.'" *Stogner v. California*, 539 U.S. 607, 620 (2003) (citing *Hanger v. Abbott*, 73 U.S. (6 Wall.) 532, 539–42 (1868)). More generally, measures that may be "proper" because of the exigencies of war, to forward Congress' war powers, *Stewart*, 78 U.S. (11 Wall.) at 507, are not thereby automatically rendered "proper" when carrying out other congressional powers allegedly supported by entirely different justifications.

C. If this Court adopts Petitioner's interpretation of Section 1367(d), *but see supra* pp. 1–2; Resp. Br. 12–37, and then agrees with the States that this renders the operation of Section 1367(d) unconstitutional, this Court should still answer the Question Presented in the District's favor. In particular, the unconstitutionality of Petitioner's interpretation of Section 1367(d) should be resolved by invalidating the portion of the statute that would be read as extending the limitations period for additional months or years, while leaving in place the "period of 30 days after [federal] dismiss[al]" provision. This would carry out congressional intent to prevent the loss of state claims by giving plaintiffs a 30-day refiling window, *Jinks*, 538 U.S. at 462, and would thus be appropriate under this Court's severability doctrine, *see Alaska Airlines, Inc. v. Brock*, 480 U.S. 678, 684–85 (1987); *accord Free Enterprise Fund v. Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477, 508–09 (2010); *see* Resp. Br. 28–32 (explaining that, in enacting Section 1367(d), Congress intended to adopt a 30-day period to refile after a federal dismissal).

III. For Many Of The Same Reasons, The Constitutional Avoidance Doctrine And Federalism Clear-Statement Rule Require The 30-Day-Window Interpretation

If this Court were to conclude that Section 1367(d)'s text is ambiguous as between the District's interpretation and Petitioner's reading, then the con-

stitutional, federalism-based considerations discussed above would require adopting the District's view that Section 1367(d) simply provides a 30-day refiling period.

A. This follows from two closely related canons of statutory construction. *See* Resp. Br. 37–49.

First, under the constitutional avoidance doctrine, "where an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems unless such construction is plainly contrary to the intent of Congress." *Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 575 (1988). This doctrine derives from the respectful understanding that, because "Congress, like this Court, is bound by and swears an oath to uphold the Constitution[,] [t]he courts will . . . not lightly assume that Congress intended to . . . usurp power constitutionally forbidden it." *Id.* at 575. The avoidance doctrine can be applied after finding that one of two possible constructions of a statute would, in fact, "violate[ ] the Constitution," *NFIB*, 567 U.S. at 562 (opinion of Roberts, C.J.) (citing *Blodgett v. Holden*, 275 U.S. 142, 148 (1927) (opinion of Holmes, J.)); *Murray v. The Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64, 118 (1804), or to avoid "needlessly confronting" a difficult constitutional issue in the first place, *Edward J. DeBartolo*, 485 U.S. at 575; *accord Bartlett v. Strickland*, 556 U.S. 1, 21 (2009); *see generally* Adrian Vermeule, *Saving Constructions*, 85 Georgetown L.J. 1945, 1949 (1997) ("[T]he former [ap-

proach] requires the court to determine that one plausible interpretation of the statute would be unconstitutional, while the latter requires only a determination that one plausible reading might be unconstitutional.").

Second, under the federalism clear-statement rule, "it is incumbent upon the federal courts to be certain of Congress' intent before finding that federal law overrides the usual constitutional balance of federal and state powers." *Bond v. United States*, 134 S. Ct. 2077, 2089 (2014) (citation omitted). Under this rule, if Congress intends to intrude upon the States' sovereign powers, it must make that intent "clear and manifest," such that Congress' intention is "unmistakably clear in the language of the statute." *See Gregory*, 501 U.S. at 460–61. This rule embodies "an acknowledgment that the States retain substantial sovereign powers under our constitutional scheme, powers with which Congress does not readily interfere." *Id.* at 461.

This Court's decision in *Raygor v. Regents of University of Minnesota*, 534 U.S. 533, also dealing with Section 1367(d), illustrates the proper operation of these two principles, which are often inexorably intertwined when the constitutional problem relates to a federal intrusion upon the States' sovereign prerogatives. *Raygor* considered whether Section 1367(d) tolled state-law statutes of limitations for supplemental claims brought against nonconsenting States in federal court, where those federal lawsuits were thereafter dismissed under the Eleventh Amendment. In holding that Section 1367(d) does not apply

to claims against such nonconsenting States, this Court explained that "[w]hen Congress intends to alter the usual constitutional balance between the States and the Federal Government, it must make its intention to do so unmistakably clear in the language of the statute." *Id.* at 543 (citation omitted). Linking this clear statement rule to the canon of constitutional avoidance, *Raygor* added that "allowing federal law to extend the time period in which a state sovereign is amenable to suit in its own courts at least affects the federal balance in an area that has been a historic power of the States" and may even "raise[ ] a serious constitutional doubt or problem." *Id.* at 544.

B. Both the constitutional avoidance doctrine and the clear statement rule require the District's interpretation of Section 1367(d).

With regard to the avoidance doctrine, there is (at the very least) serious constitutional doubt as to the constitutionality of Petitioner's reading of Section 1367(d), and that reading would, in fact, render the statute unconstitutional. As discussed in detail above, Petitioner's interpretation is not "necessary" to achieving any interests under the Inferior Courts Clause. The "ends" that Petitioner believes are served by her understanding—allowing plaintiffs more time, beyond a 30-day refiling period, to consider "strategic" options for future state-court litigation—are not grounded in any meaningful federal interests. *See supra* pp. 15–16. And the "means" that Petitioner believes Congress selected to carry out these non-federal ends—adding years beyond the 30-day refiling pe-

riod—would be disruptive to States' sovereign interests. *See supra* pp. 16–17, 20–22. Petitioner's interpretation would also render the statute unconstitutionally "[im]proper" because that interpretation would assign to Congress plenary authority over state statutes of limitations. *See supra* Part II.B.2. On the other hand, this Court in *Jinks* has already held that the District's understanding of Section 1367(d) as merely providing a 30-day refiling period is within Congress' authority under the Necessary and Proper Clause. *See supra* Part I.

Similar considerations require the District's interpretation under the federalism clear-statement rule. Each State has a vital sovereign interest in determining its own statutes of limitations. State-law limitations periods are not mere technical minutiae, but are the result of legislative policy judgments about the proper balance between competing fairness and efficiency interests. *Marion*, 404 U.S. at 322 n.14. They are integral parts of the causes of action to which they apply, and when a "cause of action is created by local law, . . . [i]t accrues and comes to an end when local law so declares." *Ragan v. Merchs. Transfer & Warehouse Co.*, 337 U.S. 530, 533 (1949). Enacting and enforcing the "limiting [of] the time of bringing suit . . . [is] *one of the most sacred and important of sovereign rights and duties*." *Hawkins*, 30 U.S. (5 Pet.) at 466 (emphasis added). For that reason, federal extension of state limitations periods for years, as Petitioner's interpretation would require, unquestionably "interfere[s]" with the States' "sover-

eign powers," thus requiring (at a minimum) "unmistakably clear . . . language [in] the statute." *Gregory*, 501 U.S. at 460–61 (citation omitted). On the other hand, the District's interpretation is respectful to state sovereignty, as it merely provides a refiling window no longer than necessary to keep state-law claims from automatically becoming "time barred." *Jinks*, 538 U.S. at 462.

CONCLUSION

The judgment of the District of Columbia Court of Appeals should be affirmed.

Respectfully submitted,

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